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ABSTRACT

This report, one of an annual series, analyzes a number of issues critical to educational negotiations in New Jersey in 1982 and reviews important bargaining tactics from the school board's perspective. The articles included deal with the scope of negotiations; the predictable aspects of the bargaining process; basic bargaining errors; the timing of negotiations; agency shop law; mediation; communicating with the public during negotiations; the effects of collective bargaining on educational quality; and teacher salary levels in New Jersey. An extensive analysis of the New Jersey Education Association's sample agreement for 1982-83 constitutes the bulk of the document. A brief bibliography identifying relevant publications and films and a list of recent court decisions affecting negotiations complete the report. (Author/PGD)

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NEGOTIATIONS 1982

by
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INTRODUCTION

This publication is intended to provide board members and administrators with a practical guide to negotiations with teacher unions. It does not attempt to tell you "all you need to know about collective bargaining." A single book could not be that comprehensive and still be as timely as we have tried to make **Negotiations 82** and its predecessors in this series.

Instead, this book gives the school district negotiator a review of important bargaining tactics and an analysis of critical issues for the coming round of negotiations. Included again is a revised analysis of the sample teachers' collective bargaining agreement distributed by the New Jersey Education Association. Readers looking for more information on the negotiations process should refer to these articles in previous editions of this book:

Negotiations 79

- The Meaning of Good Faith Bargaining
- Recordkeeping
- At the Table
- Negotiating Committees and the Board
- Board Proposals
- Impasse Procedures

Negotiations 80

- Employee Grievances
- An Analysis of Selected Contract Clauses (Sabbatical Leave, Personal Leave and Tuition Reimbursement)
- Balancing Management Rights and the PERC Law
- The Use of Professional Negotiators
- The Role of Supervisors in Negotiations
- Employee Relations in the Context of the Labor Agreement

Negotiations 81

- Agency Shop Negotiations (Basic Information)
- When to Start Bargaining
- An Analysis of Selected Contract Clauses (Recognition, Payment for Unused Sick Leave Upon Retirement, Transfer Clauses)
- Caps, Inflation and Negotiations
- Opening Schools During a Strike
- Maternity, Pregnancy Disability and Childcare Leaves: An Analysis With Recommendations

We also recommend **An Analysis of Teachers' Contracts in New Jersey 1980-81, 1981-82** as your initial source of information for preparing for negotiations, with data from over 500 school districts on salaries and selected fringe benefits, and a discussion of trends in union demands across the state. **Collective Bargaining Data 1981-82/1982-83,** available on February 1, 1982, will contain salary and fringe benefit data from nearly 400 1981-82 teacher contracts. Both publications are available from the NJSBA Business Office.

Negotiations in New Jersey schools are not getting any easier. These publications have proven useful to many school boards in the past. But printed instruction and advice cannot guarantee a successful conclusion to negotiations. The criteria for that achievement remains experience, training, stamina and fortitude by the board's negotiating team. Those qualities are critical to reaching a labor agreement that is fair to the board, fair to teachers, and fair to the community and the children of the district. This is true whether a district employs a professional negotiator, or uses a board member or administrator as its spokesperson at the table.

Good luck in negotiations.

Garry M. Whalen
Director of Labor Relations

THE SCOPE OF NEGOTIATIONS

For the past decade, the New Jersey Supreme Court has been the dominant influence in deciding what may and may not be bargained. In a series of landmark decisions, the Court has established guidelines for determining whether a subject is a required or illegal topic for negotiations. While the Public Employment Relations Commission (PERC) has primary jurisdiction to make scope determinations, PERC must adhere to the guidelines set by the Court when rendering its decisions. As PERC decides issues and is either affirmed or reversed by the Court, the scope of bargaining is further defined.

In August of 1978, the New Jersey Supreme Court substantially narrowed the scope of bargaining in its *Ridgefield Park*[1] and *State of New Jersey*[2] decisions. *Ridgefield Park*, in eliminating the permissive category of bargaining, ruled that only two categories for negotiations exist: required (mandatory) and illegal. The Court defined required topics of bargaining as terms and conditions of employment that intimately and directly affect the work and welfare of public employees and on which negotiated agreements would not significantly interfere with the exercise of basic management prerogatives concerning government policy. Illegal topics include all major educational policy decisions and management prerogatives. In the *State of New Jersey* case, the Court held that topics which are specifically set by statute or regulation cannot be negotiated if negotiations would contravene either the statute or regulation.

In another landmark case, *Woodstown-Pilesgrove*[3], the New Jersey Supreme Court ruled that a school board need not negotiate over the impact of non-negotiable educational policy decisions. The Court stated that a balancing test had to be struck in deciding if an item was either a mandatorily negotiable topic or an illegal topic. Where the dominant issue is an educational goal, there is no obligation to negotiate over either the issue or its impact. Where the issue is not an educational goal, but instead one of compensation or workload, it is subject to the negotiations obligation.

Although matters of educational policy and management prerogatives cannot be negotiated, a method for the resolution of complaints arising out of the application of management prerogatives to individual employees is a mandatorily negotiable term and condition of employment. In *Bernards Township*[4], the New Jersey Supreme Court determined that the withholding of a teacher's salary increment was a non-negotiable management prerogative that could not be submitted to binding arbitration. The Court went on to say, however, that the matter (withholding of a salary increment) could be submitted to **advisory arbitration**, if the parties so agreed. The Court reasoned that since a non-binding mechanism for resolving a dispute over the application of a management prerogative intimately and directly affected a teacher's work and welfare, and since agreeing to this type of mechanism would not significantly interfere with educational decision-making, advisory arbitration on the application of management rights to individual employees was a term and condition of employment in and of itself. If the parties did agree to this non-binding mechanism, and the dispute was not resolved, the Commissioner of Education would be available to the employee for a final determination.

In two recent Appellate Court decisions both involving the *State of New Jersey*[5,6], the court found the issues of **subcontracting** (hiring an outside firm to do work formerly done by unit employees) and **discipline** to be non-negotiable management prerogatives. Prior to these decisions, these subjects were negotiable terms and conditions of employment and continue to be viewed as such in both the private sector and much of the public sector. However, applying *Ridgefield Park* and the *State of New Jersey* among other precedents, the court found decisions on subcontracting and discipline to involve matters of **fundamental government policy.** More specifically, the court viewed the decision to subcontract as concerning management's right to determine who will perform a certain function in the most efficient manner. The decision to discipline was viewed as essential to the maintenance of an adequate, efficient and effective public work force and thus an integral part of government policy. Since both of these decisions are on appeal to the New Jersey Supreme Court it will be interesting to see if the higher Court shares this view.

The following items have been held to be **required**

1 Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 NJ 144 (1978).

2 State of New Jersey v. Local 195, IFPTE and Local 518, SEIU, 78 NJ 54 (1978).

3 Woodstown-Pilesgrove Regional School District v. Woodstown-Pilesgrove Regional Education Association, 81 NJ 582 (1980).

4 Bernards Township Board of Education v. Bernards Township Education Association, 78 NJ 311 (1979).

5 Local 195, IFPTE, AFL-CIO v. State of New Jersey, 176 N.J. Super. 85 (1980).

6 State of New Jersey v. Local 195, IFPTE and Local 518, SEIU, ____ N.J. Super. ____ (1981).

topics of bargaining by PERC and the courts.[7] Remember: you must **negotiate** concerning these if demanded by the union; you do not have to **concede** unless you desire to do so.

- Advisory arbitration for the application of management prerogatives to individual employees
- After school teacher-only workshops
- Agency shop
- Committees on non-negotiable topics that have merely advisory authority
- Compensation
- Disciplinary procedures for employees that do not infringe upon management's right to discipline
- Duty free lunch
- Evaluation procedures that do not contravene statute or administrative code
- Fair dismissal procedures
- Fringe benefits, including benefits for riffed teachers if incorporated into the contract
- Grievance procedures
- Holidays
- Holdback of salary
- Hours
- Insurance, including disability income
- Job security (for employees not covered by tenure)
- Length of the collective bargaining agreement
- Merit pay
- Payment for unused accumulated sick leave
- Past practice
- Personal leave
- Personnel file, access to
- Physical and mental exam, beyond statutory authority
- Physical facilities and working conditions, smoking in teachers' lounge
- Posting procedures
- Preparation periods
- Procedures for selection and promotion of department chairpersons, other positions
- Representation for teacher conferences, other meetings
- Sabbatical leaves
- Safety issues
- Salary guide, initial placement, credit for experience
- Teacher-pupil contact time
- Teaching periods, number of
- Transfer and assignment procedures
- Union business, time off for, use of prep period
- Tuition reimbursement
- Vacations
- Workload
- Work day, length of
- Work year, length of[8]
- Zipper clause

The following items have been determined to be **non-mandatory topics of bargaining** under *Ridgefield Park:*

- Absenteeism and tardiness policies
- Academic calendar
- Affirmative action plans
- Application of evaluation criteria
- Assignment
- Audio-visual equipment, use of
- Budget formulation
- Class size
- Contact time for students
- Curriculum
- Decision to assign bus, cafeteria, corridor and playground supervision
- Decision to reschedule snow days in teacher vacation period
- Decision to go to split session
- Discipline
- Evaluation, advance notice of observation and who evaluates
- Extra-curricular activities, assignment of
- Facilities relating to the education process
- Impact[9] of non-negotiable decisions
- Lesson plans, format of and scheduling of submission
- Productivity studies
- Qualifications for employment
- Qualifications for increment
- Qualifications for promotion
- Staffing, number of employees
- Student safety
- Student testing
- Subcontracting
- Sunshine bargaining
- Supervision, of employees by department chairperson
- Transfer, decisions and criteria
- Use of teacher aides

The following items have been held to be **illegal topics of bargaining because they contravene specific statutes or regulations:**

- Composition of the bargaining team
- Decision to RIF
- Early retirement incentives
- Evaluation criteria
- Extended sick leave
- Impact of RIF on remaining teachers, and on riffed teachers
- Maintenance of membership
- Non-renewals
- Parity
- Pensions
- Procedures for RIF
- Religious leave (paid), if not charged to general personal leave or vacation
- Seniority provisions inconsistent with Title 18A
- Student grievance procedures
- Withholding of increments

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7 If a panel of the Appellate Division took a position opposite PERC, the court position is the one listed here.

8 This is generally mandatory for public employees, however, for teachers it is mandatory only to those days in excess of the 180 minimum required for state aid.

9 Impact was declared illegal under Woodstown-Pilesgrove.

THE RITUALS OF BARGAINING

As the negotiations process begins to get under way, let's pause and reflect upon those predictable aspects of each new bargaining season. These predictable aspects may appear quite familiar by now, because they probably have been seen, to some large degree, in all previous negotiations. They are so familiar that they have become rituals, which are noteworthy more for their symbolic significance than for their substance.

The Laundry List of Union Demands

Since **everybody knows** that unions ask for much more than they can ever expect to obtain in bargaining, why, after all these years, can't the parties quickly reduce the number of proposals to a manageable few? There are three major reasons why this does not usually occur until months of bargaining have taken place.

The first reason is the simplest. **Union trainers are fond of stating, "you'll never know what you can get unless you ask for everything."** To test this adage, teacher unions submit for consideration a lengthy list of proposals.

The second reason is this: the laundry list of union demands is really a composite of the special interests of individual employees (e.g., negotiating team members and union officials); classes of employees (such as coaches and high school teachers); and the national, state, and county organizations (which may push for agency shop and double digit salary increases). Personal, political and organizational concerns require that these issues be negotiated, so that all the varying and often competing elements of the bargaining unit believe that their interests are being protected. It is **not** critical to the union that all these concerns be **satisfied**; it is often enough that they can prove these special interests have simply been **represented** through negotiations over a certain proposal.

Finally, the more initial proposals submitted, the greater the opportunity the union has "to make concessions" by way of modifying or withdrawing many of its initial demands. It is common for a union to note its desire for settlement in May or June by pointing to its substantial modification or withdrawal of demands that **it never expected to get in the first place.** By showing that it has changed or dropped many of its earlier demands, the union seeks to convince the board that it is being more conciliatory. **In fact, the union is giving up nothing that it ever had or ever expected to get.**

The Astronomical Cost of the Total Union Package

It is well worth the time to cost out all initial union demands as to their potential financial and administrative implications. The economic cost of union proposals is relatively easy to calculate. (See **Costing Out the Labor Agreement**, NJSBA, 1979). The administrative cost may be more difficult to calculate, but is still essential to assess because agreement on certain evaluation procedures, for example, could complicate the job of school building administrators in their staff evaluation efforts.

The total cost of the union's initial economic demands will likely "boggle the mind." When you combine the cost of demands for a twenty percent salary increase, an improved dental plan, a new prescription drug plan, payment for accumulated sick leave, and increases in preparation time coverage payments and tuition reimbursement allowances, you will find that the total cost of the union economic package could be over forty or fifty percent of the existing salary base.

Although these figures should concern you, they should not surprise you. What might be surprising is that the union probably has no idea of what the cost of its initial package is. After all, the board, not the union, bears the responsibility for finding the money to pay for it.

The Importance of Each and Every Issue

One of the reasons why the bargaining process takes six months or longer is that it takes time for the union to whittle down its long list of demands to a serious few. During the first few bargaining sessions, the union will likely emphasize that each and every one of its demands is equally important, and that no settlement will be forthcoming unless all demands are agreed to. Of course, this is mere window dressing for the more serious bargaining that will come later.

The board must take steps to determine what is or is not **really** important to the union. Force the union to justify each demand by a series of questions, thus **keeping the burden of proof** on the need for a change upon the union negotiators. And don't be too concerned about the union's alleged commitment to all of its proposals. Time has a way of imposing pressure on the union to be more realistic in connection with the number of proposals to which it is truly committed.

Dredging Up Old Union Demands

It is familiar to see many of the same union demands reappear during each new round of bargaining. Their reappearance is due to the board's persistent refusal to agree to them. The union negotiator will frequently say in connection with these now familiar demands that the union has conceded too often on this issue and on others like them: "This is the year we intend to finally get board agreement"; or "No more stalling, we've conceded on these issues for too long, and we need them now more than ever before."

It is difficult to determine how much added importance any of these demands have assumed. Time will tell how long the union is willing to hold out for them. However, it could be as much face-saving as it is real desire to obtain agreement on these demands that led the union to bring them to the table again. Or perhaps the union believes that the current board may be more sympathetic than previous boards to these demands.

Another aspect of this ritual has to do with the **sheer number** of union proposals that are withdrawn in each

round of negotiations. Taken together, removing these proposals could be viewed as a major union concession. More realistically, however, most are not concessions but mere "throwaways" to show evidence, though not much substance, of union movement.

The "This Year is Different" Argument

Somehow all new negotiations assume an air of special importance. Board negotiators often hear proclamations from their union counterparts that "This year is different." "No longer," the union representative asserts, "will we sit by and allow the Board to dictate the terms of our next contract. We're tired of always being treated like second-class citizens, tired of living on subsistence wages."

This predictable rhetoric is often heard during the early stages of bargaining, and it centers on the issue of this year as "The Year of Change." The union's statements should not be completely disregarded because they may reflect some serious concerns about certain areas of the negotiated agreement. But since we know that nearly all teacher-board negotiations begin with that same opening speech, we are right to be skeptical of its real importance in any particular district.

The Litany of Horror Stories About the Alleged Incompetence of the Board and the Administration

Negotiations presents an open opportunity for some unions to engage in splenetic criticisms of both the board and the school administration. Somehow it is thought that belittling board members and school administrators increases chances of obtaining board agreement on the union's proposals. But the more common motive is different.

Negotiations offers the union the chance to say just about anything it wants. The veracity of the statements made by the union may be suspect, but what is really important is that these statements are made as much for the union negotiator's sake as for the people at whom they are directed. They are less intended to convince the board to accept a proposal than to convince the union team members of the toughness of their spokesperson.

An error committed or alleged to have been committed in a single circumstance should not force a board to compromise on a related bargaining position, nor should a board be apologetic at the table for making an error. Although we recognize the fact that errors are made, more often than not errors alleged to have been made represent nothing more than the union's disagreement with the contract or with board actions.

The Philosophical Discourses

There is a tendency, particularly during the early bargaining sessions, for teacher negotiators to engage in long-winded speeches about the state of education in the district. These "philosphical discourses" are often designed to convey to the administration the concern that teachers have about the quality of education. They should not always be dismissed as mere grandstanding by the union because, in some cases, they represent strongly held views about the way in which the district is being run. In other cases, however, they are nothing more than a rhetorical exercise by means of which the union attempts to criticize the board and the administration.

Take for example the matter of class size, a non-negotiable subject in this state. The board might indicate that if it were to agree to an exorbitant pay increase, it would have to increase class size. The prospect of increased class size, regardless of cause, almost instantaneously unleashes a barrage of rhetoric, the essence of which is that increased class size is inimical to quality education, runs contrary to the philosophy of the district, and violates the spirit of a thorough and efficient education. The union proposal which would give rise to the probability of increased class size is no longer the focus. Instead, the issue has become the board's intention to increase class size.

Be prepared for occasional, and sometimes frequent, philosophical outbursts. They are good drama, and negotiations often need an entertainment break. But remember that the subject that really needs discussion is the union demand that is too costly to be accepted. Don't be distracted by the "entertainment" from the real business at hand.

Summary

A recognition of bargaining rituals helps to put early bargaining sessions in better perspective. Board negotiators thus can more easily deal with predictable union behavior both in terms of the substance of the union demands as well as their own reaction to them.

BASIC BARGAINING ERRORS

We are frequently asked to describe the most important **bargaining tactics** in labor-management negotiations. It is impossible to say which tactics are best for each situation. **Timing**, discussed at page 6 of this book, is surely among the most useful negotiations tactics to understand. The following, while hardly an exclusive list, are among the most **serious mistakes** a board negotiator can make. Avoiding them, in our opinion, is a wise bargaining tactic.

A. Talking Too Much. It is generally a better use of the management negotiator's time to listen than to talk. Listening shows **empathy** for the legitimate concerns of the employees. Remember that long term relations are greatly influenced by table tactics. Listening is frequently sufficient to meet the union's real need, viz. to get an airing of its concerns. Listening costs nothing and it can let the union reveal to you its true priorities. Talking too much, on the other hand, may give the union information it can use against you, without gaining you anything.

To control the listening/talking balance, there must be two indispensable management team qualities: unity and discipline among the bargaining team, and a single spokesperson at the bargaining table.

B. Rising to the Bait. The management negotiator should never assume the defensive position when discussing a union proposal. The burden is always on the union to prove that we should agree to a change in the **status quo.** Management shouldn't let the union shift the burden to us by making us constantly explain why we won't accept its proposals. Rather, we must ask the union over and over to **justify its position.** This constant questioning will challenge the union to set priorities, reveal its true commitments to different proposals, and assess the costs it will incur (i.e. counter concessions to the board) if it insists on its position.

C. Negotiating from the Union Agenda. The setting of the agenda for negotiations can determine in large measure the outcome of negotiations. Don't discuss the union's issues first, or in isolation from management's proposals. Perhaps the most important specific application: money should always be discussed last, because this approach will expedite negotiations, minimize language concessions, and maximize the acceptability of management's economic offer.

An excellent technique to avoid working off the union agenda is this: generally, all bargaining should be done through trade-offs or packages. In this way you link **concessions on your part** to their proposals to **concessions by them** to your demands (on your own proposals or on your desire to see some of their proposals withdrawn.)

A corollary of this, and related to the concept of **timing,** is this simple rule: **never move twice in a row.** If the board has made the last move on a certain item or package of items, keep the burden on the union to accept or make a counterproposal. Don't make the error of **making a counterproposal to your own offer,** just because the union asks for more.

Finally, it is almost always better to work off your language, even as a rewrite of a union proposal, than to negotiate from the union's language. It will mean fewer concessions, less language restrictions on your administrators, and better control of the negotiations session.

D. Make All Efforts to Avoid Confrontation. Bargaining is an adversary process. It may be good or bad public policy, but it is essentially adversarial. Therefore, it's impossible to avoid all confrontation. Threats by union negotiators are **normal** and must be assessed realistically. Therefore, don't be bullied by the union negotiator or the mediator.

TIMING

The goal of any negotiator is to reach an agreement with the people on the other side of the table. To reach an **agreement**, however, the terms of the final settlement must satisfy some of the needs of the other party, while the same terms **must also be acceptable to you.**

Timing is acknowledged by all professional negotiators to be a key component in being a successful negotiator. It refers to **when** an initial offer is made, **when** it is improved, **how much** and **how quickly** it is improved, when a **final** offer is made, and when and how a union proposal is **accepted.**

It is frequently said that it matters less **what** one says across the table than **how and when** it is said. Generally speaking, the following is true in labor-management negotiations: "the later the offer, the slower the movement, and the smaller the concession, the better the position of management in negotiations."

This is true because the union is usually **not** at the table **only** to get the best agreement possible. (If that were true, negotiations would be "short and sweet" for both sides in 90% of the cases.) Rather, the union is interested in the best settlement possible, **plus:**

- the **personal pleasure** and ego-satisfaction of "facing down" the employer across the table. A board offer that is "fair and final," but offered too early in negotiations, is **an insult** to the union negotiator who comes to the table because he or she **loves to negotiate.**
- **the political need** to prove to the membership that the union negotiators are doing a terrific job of representing their interests. In many districts, a tentative agreement reached in February **would fail to be ratified**, because the union members think "if the board offers this in **February**, they will offer **more in June.**" In fact, if that same February offer had been held back and only offered in June, it would have been ratified easily. (We also know that sometimes a union negotiator can spend hours defending a proposal which he or she knows will never be acceptable to the board, because the **time** spent on the proposal is all he needs to show to satisfy the person or few persons who might gain if the proposal were accepted into the contract.)

Some union negotiators will say that a hesitance by management to make its "best" offer early in negotiations **forces** the union to constantly batter management for a better offer. But these are the same union negotiators who always ask for 20% or more in salary increases in the first year of the contract! Remember: the union is the party seeking the changes in the status quo; if it were sincerely interested in a swift end to bargaining, it would begin negotiations with a **moderate first offer.**

Timing, therefore, is knowing when to make the offer that you want, so that you **maximize its acceptability to the other side**. An appreciation of the importance of timing comes primarily from experience, but also (we hope) from reading.

Timing also involves the concept of when to **accept** a proposal. The experienced negotiator knows how to blend the right amount of hesitance with the wisdom to know that a good offer, once made, may mysteriously "disappear" if not accepted before the negotiations session adjourns. **Too fast** an acceptance may make the other team fear they've been had. **Unwillingness** to accept a good offer may provide the other party an opportunity to reexamine its position and, through bombast or legal maneuver, change its mind by the next negotiations session, by, e.g., attaching clearly unacceptable "conditions" to its position of the prior meeting.

We only hoped to describe the basic elements of timing and the reason for its importance in this article. Its nuances are only appreciated with experience.

AGENCY SHOP UPDATE

On July 1, 1980, Chapter 477, Public Laws of 1979, became effective. The statute, commonly known as the "Agency Shop Law," authorizes the parties to negotiate, upon demand, an agency shop proposal. The effect of an agreement on such a proposal would be to require all non-union members in a bargaining unit to pay a "representation fee" in lieu of dues to the majority representative. **Negotiations 1981** contained a detailed analysis of the law and its ramifications.

Since the effective date of the new statute, PERC has clarified the intent of the new law in two separate decisions. In one case, PERC held that there is a mid-contract duty to negotiate an agency shop proposal. In the second case, PERC addressed three issues: 1) whether the board failed to negotiate in "good faith" when it refused to agree to an agency shop proposal after only one negotiations session; 2) whether a board violated the Act when it demanded certain financial disclosures by the union as a pre-condition to any further negotiations; and 3) whether the percentage of union dues, fees and assessment used to determine the amount of the representation fee paid by non-union members was negotiable.

A. Mid-Contract Duty to Bargain

When Chapter 477 became effective, the three year agreement between the Wayne Board of Education and the Wayne Education Association had two more years to run. The Association demanded negotiations both immediately before and after the law became effective. The Board refused to negotiate, claiming that a valid agreement existed, and that the union, if it so desired, could raise the issue during negotiations for a successor agreement.

PERC agreed with the Association's position that it was the legislative intent to permit mid-contract agency shop negotiations. The Commission dismissed the Board and the NJSBA argument that an order to bargain would prove disruptive to stable employee-employer relations, and ordered the Board to negotiate forthwith with the Association regarding an agency shop demand. PERC No. 81-106, 7 NJPER 12067. If your district has a contract that was concluded prior to the enactment of the Agency Shop Law and which is not up for renegotiation this year, and the union demands to negotiate agency shop now, here are some suggestions.

1) The board is absolutely under no obligation to agree to an agency shop proposal. As PERC stated in its *Wayne* decision:

> *In the instant situation the fact that the Association is able to propose an agency shop provision during the term of the existing agreement does not mean that the Board must agree to it as part of the negotiations.* (Slip at p.15)[1]

2) Upon demand, the board should negotiate the union's agency shop proposal. Once the initial meeting has occurred and the issues have been thoroughly discussed, there is no reason to meet every week or other week to discuss this proposal. A board that firmly states that it will not agree to agency shop may discourage the union from seeking additional meetings because the outcome of subsequent sessions will be unchanged. Frequent meetings will serve only the interests of the union, and will likely result in ill feelings if no agreement is forthcoming.

3) The *Wayne* decision does not address the issue of whether a board has the right to bring its own proposals to the table when negotiating a mid-contract union demand for agency shop. If negotiations are limited only to agency shop discussions, a board will find itself in a position of being asked to agree to a demand without the benefit of being able to demand anything in return from the union.

Tactically, the board should establish no pre-conditions to negotiate agency shop, but could and perhaps should establish pre-conditions to any **agreement** on agency shop. In other words, the board should come to the table with the intention of negotiating an agency shop proposal, but indicate that any agreement to agency shop will be conditioned upon a **modification** of the union proposal to provide, for example, for a six month grace period for all newly employed non-union members, and for an indemnification clause; in addition the board may seek an increase in the length of the teachers' work year as a **quid pro quo.** The first two demands would certainly be natural because they are directly related to the union proposal. The third demand, the one for an increase in the length of the teachers' work year, may prompt a union response that the union will bring other issues to the table. The board should oppose such a move because it may result in full-scale bargaining. If the union argues that the *Wayne* decision does not give an employer the right to bring its own issues to mid-contract negotiations over an agency shop demand, note that *Wayne* is silent on this question and reiterate your conditions for agreement on agency shop. If these conditions are unacceptable, there will simply be no agreement.

The point is that, as long as you bargain in good faith, you may continue to say "no" regardless of what the union might say about your bargaining posture. If agency shop is a high union priority, then the union may be willing to agree to some board proposal in exchange for board agreement on agency shop. If the union chooses not to agree, then the board can still say "no."

Some boards may either oppose agency shop altogether or may prefer to negotiate agency shop as

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1 See State of New Jersey v. Council of New Jersey State College Locals, 141 N.J. Super. 470 (App. Div. 1976), affirming E.D. No. 79, 1 NJPER 39 and In re Byram Township Board of Education and Byram Township Education Association, 152 N.J. Super. 12, 30 (App. Div. 1977), wherein it was emphasized that the requirement to negotiate does not imply an obligation to concede.

part of overall negotiations where a concession on this proposal may have greater value. In either case, these boards should not agree to the union demand during mid-contract bargaining.

4) If the board intends to agree to the union's agency shop demand (remember the board has the right to say no), then it is advised that board negotiators read "Agency Shop Negotiations" published in **Negotiations 1981**, pp. 3-6 and pp. 75-77, and the analysis of the NJEA model language on agency shop appearing on pp. 80-83 of this volume.

B. Bargaining in Good Faith

The next three issues arose in a second case involving the *Woodbridge Township Board of Education and the Woodbridge Township Federation of Teachers Local 822, AFT, AFL-CIO,* (PERC No. 81-131, 7 NJPER 12147.)

1) Can a school board be found to have negotiated in bad faith concerning an agency shop proposal after only one negotiations session?

PERC found that the board had not violated the Act when it rejected the Federation's demand for agency shop. The "totality of conduct" test, as enunciated in *State of New Jersey v. New Jersey State College Locals* (see footnote 1 of this article), when applied to the set of facts presented in this case, did not warrant the finding of a violation. The filing of the charge was clearly premature.

School boards engaged in mid-contract bargaining concerning an agency shop proposal should negotiate in good faith on this subject, but should not be intimidated into agreeing to this proposal or, for that matter, any proposal, because the union may threaten to file an unfair labor practice charge. The threat of filing a charge is frequently nothing more than a pressure tactic.

2) Financial disclosure as a pre-condition to further negotiations. The issue of financial disclosure by the union arose in the context of whether the board had negotiated in good faith during the first negotiations session. PERC held that it is not *per se* illegal for an employer to inquire or request information on the union's financial status for the alleged purpose of determining the union's need for the agency shop proposal. However, PERC did note that an employer cannot insist on such information as a pre-condition for negotiations and cannot insist on such information to the point of impasse. The exact parameters on the right of the employer to request such information will have to await a future PERC decision.

3) Negotiating the amount of the representation fee. The method of computing the representation fee is set forth in the law as follows:

> *The representation fee in lieu of dues shall be in an amount equivalent to the regular membership dues, initiation fees and assessments charged by the majority representative to its own members less the cost of benefits financed through the dues, fees and assessments and available to or benefitting only its members, but in no event shall such fee exceed 85% of the regular membership dues, fees and assessments.*

PERC interpreted this part of the statute to permit the union, once it obtains employer agreement on agency shop, to set the percentage used to determine the representation fee. The employer, once it agrees to agency shop, plays no role in the determination of the percentage. The law provides the non-union employee with the opportunity to challenge the percentage set through the demand and return system. This challenge will presumably be based upon whether the percentage set by the union comports with the statutory criteria set forth in the law. The public employer thus is insulated from any dispute that may arise between the non-union member and the majority bargaining agent concerning the size of the representation fee.

Summary

So far, these are the only four issues that have been decided by PERC in connection with the new Agency Shop Law. The reader is again urged to read a more detailed analysis of the law that appears in **Negotiations 81**, pp. 3-6, and our Analysis of the NJEA Sample Language on pp. 80-83 of this volume.

MEDIATION

The Intent of Mediation

Ask any mediator his or her goal in a negotiations dispute, and you'll get the same answer: **"Settlement is the name of the game."** As long as settlement is reached voluntarily, the mediator has done his job. Note, however, that the mediator **doesn't settle the contract – you and the union settle.** The mediator is just a facilitator, helping the two parties to agree with each other on a new contract.

Note also that the mediator is acting on behalf of a specific public policy, viz. labor peace. The important point is that this is the **only** public policy he is concerned about. He has no interest in the constitutional mandate for a "T & E" education for children. Nor does he care about fiscal accountability, or responsiveness to the needs and demands of the taxpaying citizenry. If a proposed package will get a settlement, he will push for its acceptance by the board, no matter how **foolish** its acceptance would be, regardless of its **illegal** provisions, and without regard to its **long term implications** for the district and the board.

In summary, don't expect the mediator to protect your interests. He has his own professional agenda to attend to.

PERC's Role in Mediation

Mediators are assigned by the Public Employment Relations Commission at the request of one or both parties. PERC has seven staff mediators and a panel of about 30 *ad hoc* mediators, who are primarily professors, attorneys and arbitrators.

All of these mediators specialize in public sector negotiations, but none of them should be expected to know anything about your district when they arrive. It is your job to educate them as to why your district is different than the other seven they've worked in during the past three weeks.

All mediators are provided without charge by PERC. Normally they will mediate for no more than three sessions, and then urge the parties to move on to factfinding.

As mentioned, PERC will assign a mediator **even if only one party** requests it. If you believe, however, that it is too early in negotiations to get into mediation, say so to PERC. The Commission staff realize that too early, i.e., premature, entry of a mediator into negotiations is at best a waste of time, and may even be harmful to the relations between the parties and to the chances for a settlement. Once told your concern, PERC may encourage the parties to negotiate directly for a few more meetings before getting into mediation. If the union insists on a mediator, however, PERC will probably assign one, but at least PERC and the mediator know the situation they are entering. In such circumstances it is common for the mediator to meet once with the parties and then ask them to renew direct negotiations and to call him or her back when they are truly at an impasse.

There is little formal evaluation of mediators done by PERC. The Commission relies on "reports from the field," both formal and informal. Don't be afraid to report to PERC on a lousy, tactless mediator. This is especially true if you believe he has betrayed a confidence during the course of mediation. At the least, you know you will never be assigned that mediator again. If enough boards report the same type of problems to PERC, that mediator will become less active in public education labor disputes.

Procedural Functions of a Mediator

There are a variety of procedural matters that a mediator will attend to. Even his decisions in these areas, however, are linked to his goal of getting a settlement.

Scheduling meetings. The mediator will usually act as a go-between to find a mutually acceptable mediation date. This gives him the opportunity to converse privately and off the record with the negotiators for both sides. Some mediators, on the other hand, ask the parties to decide between themselves upon a list of acceptable dates, and transmit the list to him, on the theory that, once at impasse, **any** conversations between the parties may be helpful in getting a settlement.

If, as discussed above, the mediator discovers that the timing is not right for a quick settlement because there is not enough pressure on the parties at this time or because they need a breather to let emotions calm down, he will schedule the next meeting at a date some considerable time in the future.

Recessing Meetings. Like in bargaining, **timing** is essential to successful mediation. The mediator will control the ending time of meetings according to his assessment of the chances for settlement that evening.

If the mediator adjourns the meeting **quickly** he is teling the parties that he thinks they, or at least one of them, isn't serious about settling. He'll also remind them that it is **their** dispute, not his, and it is they who need the settlement, not him. Essentially, an announcement that he is adjourning the meeting because the parties are wasting his time is a **threat** by the mediator to abandon the parties to their own devices (which, of course, have already proved wanting because they are at impasse). It is intended as a catalyst to push the parties into more movement and compromise. I once saw a mediator, in a strike, set up such a situation by announcing that he was leaving until the parties became serious about negotiating a settlement. He then sat down and began to retie the laces of his shoes in preparation for leaving. **It took him 10 minutes to finish tying his shoes,** but in that time he convinced half the school board team to increase their offer to the union!

An early adjournment can also be a simple recognition by the mediator that 1) it's the wrong night for settle-

ment, 2) further time spent would be wasted, and 3) insistence on holding the parties when no progress toward settlement is likely would be damaging to his credibility and might harden the parties at their present positions.

More commonly, the mediator will not recess the meeting until **very late in the evening or until he gets a settlement.** There are various reasons for this:

- he needs time to apply his mediator's "bag of tricks," those basic mediator tactics discussed below
- he only gets three meetings in most situations, and they may need to be long meetings in order to settle complex issues
- fatigue changes your perceptions as to what's important. The mediator uses time just as you or the union might
- as the night wears on and the deadline of the next day approaches, the pressure to compromise often builds, perhaps because it is the last day of school, or the first meeting of the school year, or it's the Sunday night before you enter another week of strike and/or before the union appears in court to answer contempt charges.

Changing locations. In a crisis situation, a mediator may decide to move the negotiations to another site, usually a neutral location such as a motel. This helps to avoid the badgering of the press and the tension of pickets outside the window. It also can create a little insecurity in the mind of the party who has left his home base, e.g., the board offices, and been dropped onto unfamiliar turf.

Establishing the Agenda. Most mediators will seek to take control of the agenda, i.e., the order in which things are discussed. This lets them discover the priorities of the parties, helps eliminate the less important issues from negotiations, and creates the impression (and therefore to a large degree the **reality**) that the mediator is in control of the entire bargaining process.

Mediator Tactics

A mediator is a negotiator who doesn't have any interest in where the settlement falls. He utilizes many of the same tactics that professional (and experienced amateur) negotiators use, and throws in some that are unique to his status as a neutral.

Separating the Parties. All mediators will eventually separate the board team from the union team, placing each in separate rooms. This has proven to be a very useful technique because:

- it diffuses the tension between the parties
- it permits frank discussion within the teams of the open issues, and of the motives, actions and personalities on the other side of the table
- it allows the mediator to challenge the position of one party without embarrassment to that party (more on this later)
- most importantly, it helps the mediator to achieve **full knowledge** of the real positions of the parties; only in private meetings can he attain this full knowledge, because each party will tend to move off its last position "for his information only" when they would never do so in front of the other side.

Separating the parties to effectuate the above is a proven tactic in mediation and should not be discouraged. Through it the mediator controls communications and the flow of information between the parties. Once he has separated the parties, it is likely that he will not bring the full teams together for the duration of negotiations.

Chief Spokesperson Meetings. It is common for a mediator, once he has separated the teams, to call the chief spokesperson for each team out into the hallway or to wherever he has established his "office." There he is able to feel out the negotiators' positions and discern areas where there can be movement by either party and where there can be little or no movement.

These meetings may include both spokespersons, or the mediator may meet with them one at a time. In either case the spokesperson is usually able to be a little more candid in such private meetings than he can be in a group session.

Ascertaining Priorities. This is perhaps the most important function of the mediator. He must discover what it is you really **want** compared to what you really **need.** Once this is known to the mediator, he can begin to work on pulling together the items **needed** for a settlement. He may end up proposing that one side meet some of the "wants" of the other side, but that is just icing on the cake; if he fails to properly distinguish **needs** from **wants**, however, he'll never help the parties to reach agreement.

The tactics used to ascertain priorities are the same as we use at the table: **probing questions; repetition; paraphrasing; packaging; timing;** etc. If he is to be successful, the mediator must know and properly use these tactics so he can correctly identify certain proposals from either side as necessary ingredients to a settlement, and others as simply desirable but dispensable extras.

Assessing the Rigidity of Positions. Through the separate meeting process, the private conversations held with spokespersons, and the effort to ascertain priorities, the mediator should gain enough information to become an important resource to the board and to the union. He can recognize and inform the union that, "a cap on tuition reimbursement **is** important to the board," and to the board state that the union didn't mean "it would **never** agree to restrict personal leave use," but only that such an agreement would cost the board a great deal to obtain.

Another useful mediator tactic to get this information is the **"supposal"**: "suppose they were willing to do thus and so; would you be willing to do this and that?" When you hear this, be careful! Sometimes the best reply is, "Get me that offer and we'll see." The beauty of a "supposal" is that no one, not even the mediator, is committed to it. It permits the parties to conjecture without modifying their official positions or making a commitment they might later regret.

Deflating Extreme Positions. "Never" always becomes "maybe" in the right context. A mediator, in order to get a settlement, must try to move the parties off their desired, but extreme, positions, thus to bring them

closer to each other's true needs. This goal of the mediator demands that he utilize the most confrontation-like tactics he will ever use, for he is pushing you or the union **off** a position that you hold near and dear to your hearts.

Accusations may fly of unreasonableness, selfishness, irresponsibility, and insanity. "Get backs," i.e., correcting a past error by eliminating from the contract some employee benefit, are routinely treated this way.

But, likewise, union demands for substantial salary raises **plus** new medical fringe benefits **in each year** of the new contract are attacked by the mediator as "pie-in-the-sky" and ridiculous.

This tactic should only be used privately, between the mediator and team he is working on. If done in the presence of the other party, both parties will usually become more intransigent. If the board position has been attacked in front of the union, for example, the union will believe its position has been vindicated; the board will naturally rise to defend its position, rather than lose face before the union, and become unwilling to compromise its position, even if it had the authority to do so prior to being lambasted by the mediator.

The example above dealt with a mediator's diatribe against the board. At least as often, he is using the same approach against the union, which leads to the following general rule: "**The more time the mediator spends with the other side, the better off you are.**"

Creative suggestions. Once in a while a mediator can suggest something neither party has ever thought of which proves to be the key to the settlement.

For example:

- in one district the board refused to grant binding arbitration on the grounds that its present system of advisory arbitration was perfectly satisfactory, in that if the arbitrator was fair the board would abide by the advisory award. The mediator knew that the union was skeptical of the future actions of the board, given its new majority. He suggested that advisory arbitration remain, with this provision: if the board failed to abide by three advisory awards during the contract, all future awards would become binding! Both parties accepted.
- in another district, binding arbitration was again the stumbling block, but for a different reason. The board feared that the union would use arbitration to harass the board, by taking all grievances to arbitration, even the most frivolous ones. The mediator suggested that the parties agree to a "loser pays" clause: whichever side lost the arbitration case had to pay the arbitrator's entire fee, rather than splitting the cost equally between the parties. Both sides, confident that they would never push a weak case to arbitration, accepted this proposal.[1]

Packaging. We use this tactic and so does the mediator. After some time in the situation the mediator knows the priorities, the rigidities and the softspots of **both sides**, a sum of information that neither party may have on its own. From his private store of information he can frequently fashion a package that has enough "goodies" in it that both sides can, begrudgingly, accept it.

There is a danger for the mediator in offering his own package. If the package ignores an issue that one party ranks very highly, or includes an issue that party vehemently opposes, the mediator may lose his credibility with that side. He may be thereafter seen as pro-union or pro-board, and will be ineffective as a neutral. Because of this risk, many mediators prefer the "supposal" approach, and will only offer a "mediator's settlement proposal" as a last ditch effort, or where he is certain it will be acceptable to both sides.

Highlighting the Costs of Disagreement. Mediators don't spend much time with one party **selling the mutual benefits** of the other side's proposal. They seem much more comfortable as doomsayers, encouraging the parties to compromise **by highlighting the negative aspects of continued disagreement,** such as:

- "starting school without a contract is bad for employee morale"
- "if we don't wrap this up tonight, I can't promise that old items previously withdrawn by the other side might not pop back onto the table"
- "if we fail to settle tonight, these negotiations may drag on *forever*"
- "the longer you delay agreement, the higher the county average settlement becomes because the highest settlements always come in last"
- "if you have to go to factfinding, you never know who the factfinder will be or what he will recommend; settle tonight, 'cause the devil you know (me) is better than the devil you don't know"
- "nobody wins a strike."

Note well: none of these statements are necessarily true. Many of them are untrue in many situations. But, spoken at the right time and in the right manner, they ring true, and they may spur movement by one or both sides that eventually leads to a settlement.

Note also that mediator tactics are used with both sides. They aren't evil, and can work well when used well. **Remember:** the mediator doesn't want the union to win or you to win; he merely wants you to settle.

Bargaining During Mediation

The first thing a mediator tries to accomplish is to gain your trust. Without your trust, he is useless.

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1 The story has an interesting epilogue. The mediator was later called back by the same parties to act as arbitrator over a grievance. He eventually ruled for the union, and sent a bill for his entire fee to the board. The board appealed the legality of his decision to the courts, and had the decision reversed. The arbitrator was so informed by the board, and therefore billed the union for his entire fee. The union refused to pay on the grounds that it had won the arbitration; the board refused to pay because it had the arbitration award vacated; and the arbitrator still hasn't gotten paid! He has made this "creative suggestion" in few districts since these developments.

In order to obtain your trust, **he will promise to hold confidential any information you give him** that you do not want disclosed to the union. A good mediator will never disclose your positions to the union without your permission, because once he has betrayed a trust he is completely ineffective. Indeed, a reputation for such actions will jeopardize his acceptability throughout the state.

As an indicator of the importance of confidentiality and trust in the mediator, the PERC law at N.J.S.A. 34:13A-16(h) protects the mediator and his notes and documents from being subpoenaed for any PERC hearings.

Given the great importance of trust and confidentiality, should you give the mediator your "bottom line" when he asks for it? Not necessarily. He has to earn that information by earning your trust. After working with him for a while you may discover that he misunderstands the issues, or that he "shoots from the hip." In such cases you risk having the mediator "inadvertantly" disclosing information given to him in confidence.

Once he has established to your satisfaction his credibility and integrity, give him your best offer...*slowly*, in increments. Expose your position faster than you might with an adversary, but it is usually smart to withhold something as a sweetener for later on. You may need it.

Some other advice for bargaining during mediation:

- **don't be bullied.** Remember that he can't **make** you do anything.
- **don't agree to something you can't live with.** The mediator doesn't have to live with the agreement once it is signed, but you do. **You,** not the mediator, are responsible to the district, the community and the children.
- **don't attack the mediator personally,** because you need him to help get an agreement; but don't let him push you around either.
- **don't ignore your knowledge of tactics.** Move slowly, demand trade-offs, don't move twice without a counter by the union, etc. Mediators are especially useful when you can convince them that you cannot or will not improve your offer, but you would be willing to sell a compromise position to your team or board. By instructing the mediator to "get the offer" from the union, you set up a settlement offer that will be acceptable to you, without increasing your official offer unilaterally. If he is unable to get the "offer" you want from the union, you have retained your flexibility and bargaining position.

Summary

1. Don't be afraid of a union threat to call in a mediator. Going to mediation doesn't imply bad faith bargaining by either side, nor that the negotiations have failed. Mediation is simply an extension of the negotiations process. Frequently, in fact, the union calls in a mediator because it needs a tactful way to withdraw its many minor demands, and it knows that will be the first suggestion from the mediator.

2. Mediator tactics aren't used equally. They are used on the weaker party more. To get the most from mediation, be prepared, know your goals, use your knowledge of tactics, and be tough.

COMMUNICATING WITH THE PUBLIC DURING NEGOTIATIONS

Board members and administrators have been reminded endlessly that if they wish to have the support of the public, **they must communicate with the public.** This is as true on labor relations matters as on any other issue.

The difficulty in the labor relations area, however, appears to arise in deciding **what kind of information to provide and how to provide it.** Experienced negotiators know that bargaining through the press is usually not an effective tactic, for a variety of reasons. How then do we gather and hold the support of the public through a communications plan without circumventing and undercutting the bargaining process?

The Michigan Association of School Boards has distributed the following materials on a labor relations communications plan. The plan is clearly described and can be easily adapted for use in most districts. Study the plan to see which aspects of it can be applied without change to your district, and which ones need modification of some kind.

The most important note of explanation: the public statements on board goals that are recommended in the plan are intended to be broadly defined. **Too much specificity will tend to decrease the Board's flexibility as negotiations progress, because specific goal statements made in public are very difficult to modify or retract.** For example, a board that sought increased instructional time for students should state its bargaining goal as "improved utilization of professional staff time and expertise," rather than "a reduction of duty free time from one period per day to two per week." The latter statement is so specific that it may make your board reluctant or unwilling to consider reasonable modifications and counterproposals from the union.

Your board's goal statement for negotiations might include, "a fair salary increase for employees that is fiscally responsible given the board's limited resources; improved administrative flexibility in coordinating the district's educational program with individual staff leave requests; and improved efficiency in fringe benefit expenditures to maximize benefits for employees while maximizing the value of each district dollar spent." These statements may translate into board proposals on alternative health insurance plans, a limit on reasons for personal leave use, stricter control on starting and ending dates for childcare leaves, and a moderate salary increase. The important distinction is that the generalness of the public goal statements leaves room for compromise and accommodation, i.e. negotiations, without making the board feel, or appear to look, like it is "backing down" on its demands.

With this understanding, the following outline for a school district communications plan is provided.

I. Introduction

The purposes of a communications plan as a tool of the negotiations process are essentially the same as the general purposes which govern the communication plan of any organization or agency: to present as effectively as possible the goals of the organization, to explain its policies and decisions, and to make known its services. In other words, the successful execution of a communications plan will cause people — and, hopefully, certain agencies and organizations which also influence people — **to react positively to the management position.**

The communications plan must provide administration and the negotiations team latitude in decision-making regarding the negotiations process and disclosure of information about that process.

II. Plan Development

Questions which should be addressed in the development of a communications plan are:

A. When will the communications plan begin and when will it end? (Communications calendar)
B. Who are you trying to reach? (Audience analysis)
C. What information are you trying to communicate? (Message content)
D. What methods of communication will be most effective with the various audiences that have been identified? (Media analysis)

III. Audience Analysis

A. Internal Audiences
   1. Board of Education
   2. Total administrative staff of school district
   3. Employees directly affected by the agreement
   4. Other school district employees (indirectly affected by agreement)

B. External Audiences
   1. General public
      a. Parents or children enrolled in schools
      b. Other citizens of the school district
   2. Community organizations
   3. Community leaders

IV. A Sample Board Policy on Communications in Negotiations

Board of Education Plan
for
Strategy Development and Public Disclosure
of Negotiations Progress

1. That — except for the initial release of information regarding the board's goals in negotiations, which shall be the function of the president — the superintendent will be the spokesperson with the board president being included whenever warranted. Board members, when contacted by the news media regarding negotiations, shall refer all inquiries for information to the superintendent's office.

2. That the board of education shall be kept informed of negotiations progress as set forth in the Communications Plan. In addition, the superintendent shall advise the president of current status and strategies in meetings to be held each Monday and more often as deemed necessary.
3. That the purpose of the board throughout negotiations be that negotiations cannot be conducted through the public media and that the sole purpose of news releases and news conferences is to keep the public informed of the status of negotiations, particularly as they relate to board goals.
4. That public positions by any board member on major issues shall not be taken without prior consent by a majority of the board.
5. That the superintendent and selected staff shall assist the negotiations team as necessary in developing strategies. During the latter stages of negotiations, this strategy team shall determine, following each session, the need for and the content of information released regarding the status of negotiations.
6. That the superintendent shall determine the need for a news conference or other means of public disclosure of information and may release whatever information he thinks appropriate.

V. Implementation

The following table illustrates the "who, what, how and when" to designing and implementing a communications plan. The exact dates for communications will vary in each district according to when you generally start negotiations and when you usually settle. It is important, however, that the dates be specified in the plan so that the appropriate communications are made routinely, without the need for separate decision-making at each step of the plan.

BOARD OF EDUCATION PLAN FOR
STRATEGY DEVELOPMENT AND PUBLIC DISCLOSURE OF NEGOTIATIONS PROGRESS

Audience	Content Activities and Plans	Media Source/Method	Date
Board of Education	Workshop on bargaining process to prepare Board for the upcoming negotiations	Negotiator and administration	October
	Work-study sessions on goals and strategy	Administration	November
	Approval of negotiations plan, which includes the Board goals, Board strategy, and the total communications plan	Administration and negotiation team	November
	Announcement of the Board's negotiations team	Board meeting	December 1
	Announcement of the Board's goals for negotiations	Board meeting	December 1 (prior to first session with the union)
	Communications with the Board during negotiations:		
	Direct Reports		January - July
	1. Checklist of issues in Board material once per month		
	2. Oral reports in executive session as necessary		
	3. Special public status reports as appropriate		
	4. Special sessions as needed		
	5. Recommendation of ratification of the agreement		
	Indirect Reports		May
	1. News releases (as directed by the Superintendent) a. Reports on progress and issues addressed. Text of release delivered to Board members. b. Special releases during bargaining session. Text of release delivered to Board members.		
	2. Phone/tape messages on progress during latter stages		

Audience	Content Activities and Plans	Media Source/Method	Date
School District Administrative Staff	Survey of concerns with present master agreement	Negotiations team	September
	Presentation of Board goals for negotiations	1. News media 2. Internal publications 3. Superintendent's staff meetings	December
	Communications with administrative staff during negotiations for review of negotiations progress	1. Superintendent's staff meetings 2. News media 3. Internal publications/ memoranda 4. Special meetings as needed	January - June
		5. Phone/tape messages	Latter stages
Employees Directly Affected by Agreement	Board goals for negotiations	1. Board of Education meetings 2. News media reporting 3. Internal publications	December
	Communications during negotiations	1. News media 2. Internal publications (special reports as directed by Superintendent) 3. Information informally transmitted by building administrators	January - June
Other School District Employees	Board goals for negotiations	1. Board of Education meetings 2. News media reporting 3. Internal publications	December
	Communications during negotiations	1. News media 2. Internal publications (special reports as directed by Superintendent) 3. Information informally transmitted by building administrators	January - June

Audience	Content Activities and Plans	Media Source/Method	Date
School Parents	1. General communications would follow same plan as for general public	News media	January - June
	2. Special communication of Board goals to PTA/PTO leadership	Meeting sponsored by Board	January
	3. Indirect sources: school administrators and other school employees	Building administrators and other school employees	January - June
	4. Special meetings with parent organization leadership	Sponsored by Board	As needed
	5. Special mailings to parent leaders	Board meeting summaries	As needed
Community Organization Leaders	1. General communication	News media	January - June
	2. Special presentation of Board goals	Board sponsored meeting	As needed
	3. Special mailings on progress of negotiations	Letters, copies of special news releases	As needed
General Public	Board goals for negotiations		
	1. Presentation at Board meeting	News media	December
	Communication during negotiations		
	A. During School Year		
	1) News releases as directed by Superintendent	News media	January - June
	2) Special status reports at Board meetings or information-study meetings	News media	
	B. During Summer Months		
	1) News releases following each session	News media	July - September
	2) Phone/tape service to news media after each session during latter stages	News media	
	3) Special releases during bargaining sessions	News media	
	4) Special news conferences and TV statements (when deemed appropriate by the Superintendent)	News media	

CAN COLLECTIVE BARGAINING IMPROVE THE QUALITY OF EDUCATION?

To answer this question, two areas must be explored: the intent of trade unionism, and the outcomes of teacher negotiations.[1]

The Intent of Trade Unionism

In order to consider the question "Can collective bargaining improve the quality of education?", we must first look at collective bargaining for what it's intended to do. **The intent of trade unionism or collective bargaining is to protect the interests of the members of that organization, i.e., that union or that trade.** As Frank Totten, President of the New Jersey Education Association, said this morning, "you can't expect teachers to do more with less." I think you can expand that. A long time ago, the founder of the American Federation of Labor, Sam Gompers, was asked, "What do you want from employers?" Gompers replied, "More, more and more again." He might have gone on to say, "more **for** less."

That's what trade unionism is about. Its purpose is **not** to improve the output of a certain organization, whether it be an educational organization or a manufacturing firm. **Its purpose is only to protect the interests of its members.** It's a truism in labor relations, but I think accurate, that **the purpose of a collective bargaining contract is to restrict managerial freedom**, as a way to protect the members' interests. That's just a basic aspect of the labor relations process.

In my experience, the professionals who tend to push for unionization and take leadership positions in the union in education are doing it because bargaining provides a new kind of challenge. I think teacher unions provide something for a bright ambitious person to do with his or her time that is substantially different than what that person has done for the past eight or ten or fifteen years. We all know it's not easy to negotiate a labor agreement, nor to run an effective union but, importantly, it's also quite different from the classroom surrounding. The teacher union leader does not enter the negotiations fray to improve the quality of education. That's not his/her job.

A problem with trade unionism, from a managerial point of view, is that a trade union has to seek to satisfy the most base interests within the union. **The union has to satisfy the broadest concerns.** It doesn't seek to make a small elite happy, but rather seeks to satisfy the greatest number of people. Normally the way to do that is through money. By providing money to everybody, you meet in some fashion everyone's needs. A more relevant example for this discussion is **job security**, in the form of a "just cause" provision. By protecting the poorest employee, you also protect the better employee from dismissals, negative evaluations, or from any adverse action by management.

The trade union in education is the teachers' association and, like trade unions throughout the American system of labor relations, it aims to protect the worst employee because it thereby protects the greatest number of people, i.e., all those who are better than the worst employee. Most trade unionists would not disagree with that. They don't find that role un-American and neither do I. It's just what they do for a living. Given that as a definition of what trade unionism is about, let's now talk about the outcomes of teacher negotiations.

The Outcomes of Teacher Negotiations

My intent is to describe how these outcomes affect the quality of education. There are four outcomes I want to focus upon.

Decreased public input. One outcome is related to the nature of the bargaining process: there's going to be a decrease in public input regarding the running of the schools. That's true regarding allocation of available money and it's true regarding educational policy-making. There's a decrease in public input, a decrease in public influence and, in the long run, a potential decrease in public support. There are, of course, many other reasons why the public may not like a particular school system. I'm citing this aspect because it's relevant to today's collective bargaining seminar.

Decreased work output. Another outcome of teacher negotiations is decreased work output. You can look at that in a variety of ways. Decreased **class size** is a major concern for teacher unions across the country. It is justified by unions in terms of better pupil performance in a smaller classroom. Most studies, however, conclude it is very difficult to prove a significant difference in pupil performance in any class size above 12 or 15 pupils in a class. In other words, **mass instruction is mass instruction**. But the decreased teacher work output of smaller class size is indisputable.

Another way to decrease output to is demand **free time in the course of the workday.** For example, in most school districts in New Jersey, and it's true in other states, there are now demands on the table for elementary school preparation time. In many districts, that clause is already in the contract. Ten years ago such clauses were unheard of in most school districts. Profes-

1 This article is adapted from a presentation by Garry Whalen given at the conference, "Collective Bargaining in Education in Times of Fiscal Austerity and Declining Enrollments," sponsored by Rutgers University and the Center for the Study of Collective Bargaining in Education at the University of Massachusetts. Copies of the entire Proceedings are available for purchase from the Center.

sional teachers in public schools did their preparation away from the school building, or after the students had gone home. Many contracts now provide a guaranteed elementary prep period every day, or 120 or 150 minutes every week. That's simply decreased output. **Preparation used to be done anyway, but now it's done on the employer's time.**

Sometimes that preparation time comes out of **decreased duty periods**. Teachers used to spend some of their time supervising a group of students who were only studying and not interacting with the teacher, or supervising a cafeteria, or supervising the hallways or monitoring the rest rooms. Those jobs frequently now are given to non-certified personnel.

Another way to decrease output is to demand **free** the **length of the workday**. Most unions, public or private sector, push for a shorter workday. It happens in education just as it does in other negotiations. Frequently, the unions win it. One aspect of decreased workdays that we see commonly is to have teacher training, i.e., inservice education, occurring on shortened pupil days. You close the school after four hours of pupil contact and have a half-day inservice program for the professional staff, rather than doing it on a Saturday or doing it in the evening. It simply decreases the work output of employees. Similarly, parent conferences, historically, were held in the evening. More and more they are held in the afternoons following a shortened pupil day.

Shorter work year is a very obvious example of decreased teacher output. Teacher unions traditionally press for a minimum work year, according to the minimum set by statute or regulation. In New Jersey, like many states, it is 180 pupil contact days. Many contracts now mandate this minimum work year and include in it up to a dozen half-days.

Finally, another way to measure decreased work output under a collective bargaining contract is to look at **increases in sick leave** and **increases in personal leave**. Five years ago almost no teacher contract had a personal leave clause which let an employee take off for no reason at all. Now many contracts provide "up to five personal leave days for the following reasons: 1) three days for no reason at all..." These are essentially paid vacation days, which were unheard of a short time ago in public education and are becoming common now.

Decreased management flexibility. A third outcome of teacher negotiations is decreased management flexibility to meet what management perceives to be pupil needs. For example, many contract clauses provide that seniority shall be the sole criteria or the most important critieria for management decisions regarding personnel. Consider, for example, the decision to transfer a teacher. Who should get transferred first? Many contracts answer, "People with less seniority." Alternatively, employees can bid on jobs, and the people with the most seniority get the first option to take the job.

The same goal of decreased management flexibility would attach to other parts of a collective bargaining contract, e.g., seniority for reductions in force. Let's assume all teachers are not equal in their ability to produce quality student performance. A contract clause that demands that all reductions in force be by seniority interferes in management's ability to make the best assignment decisions or to retain the best people. In New Jersey, **both those categories cannot be negotiated because of our limited scope of negotiable topics, but they are frequently negotiated in other states and they are part of the common roster for teacher demands across the country.**

Decreased management flexibility is also reflected in very complex and very difficult evaluation procedures. Such procedures often state that dismissals, even of non-tenured teachers, can only be for just cause, and a grievance over a dismissal can go to arbitration. The traditional industrial practice is that a probationary employee is "here today, gone tomorrow." That's not true in education where, although probation is technically for the three full years before tenure is granted, the employee is subject to the protection of a just cause clause. Such clauses, because of the *Ridgefield Park* decision, are non-negotiable in New Jersey, but are frequently demanded in other states.

Some contract clauses actually state that no student grade shall be changed without the permission of the teacher who assigned the grade. I would characterize that as a significant limitation on management's ability to set educational policy.

Increased costs. A fourth outcome of teacher negotiations, the last one I'll mention, and the most obvious, is increased costs, defined as increased compared to what they would be without collective bargaining. Commissioner Burke today said that a great percent of school costs go to professional salaries. In many districts salaries and fringe benefits for staff will take about 75 percent of the school district budget. Operational costs take the other 25 percent, and there's the crunch.

By increased salaries, I'm saying increased salaries beyond what the job market would dictate normally. That's the whole purpose of collective bargaining: **to take employees out of competition with each other** and **out of competition with the unemployed.** That may be good public policy, but it's also **a planned outcome of negotiations resulting in salaries inflated beyond what the market would normally produce in a non-union environment.**

In addition to increased salary payments beyond what the market would dictate, you find tremendous misallocations of funds. I am convinced that the teacher with 15 years experience does not deserve salary over 50% more than the third year teacher. But that ratio is not uncommon. If you move from one column to the next, the first year teacher with a BA usually makes one half of the money of the 15 year teacher with a master's degree. That difference does not reflect the ability of these two teachers to produce acceptable student performance.

In addition, in order to get a true picture of increased costs you also have to consider the increased **insurance costs** which have come out of educational collective bargaining in the last ten years. These costs are substantial, and belie any union argument that employee compensation has not kept up with inflation.

Under the T and E law in New Jersey, a district with a tight cap on permissible budget increases is almost always a high wealth district as measured by equalized property value per pupil. Such a "low cap" district gets the right to increase its budget perhaps by six percent in

a certain budget year. A "high cap" low-wealth district, on the other hand, gets to increase its budget by perhaps 15 percent. The intent behind this system is that, because the high cap districts are spending considerably less per pupil, they are permitted to get more money through the budget process in order to put that extra money into pupil services. In practice, however, **the cap is the best predictor of the employer's ability to pay in teacher negotiations in New Jersey and the best predictor of negotiated salary settlement rates.** All of which means that districts getting extra money to increase pupil services are, in fact, putting it into increased teacher salaries.

All these increased costs might work somehow as a catalyst to improve student performance if those payouts were related to or could be proven to be motivators for teacher performance. They are not, because tenured teachers are almost completely insulated from accountability for their effect on student performance. Seniority is, in New Jersey and other states, the sole criteria for layoff or recall from a reduction in force. Tenure is, for all practical purposes, a guarantee against dismissal. There are no comprehensive merit pay plans in New Jersey for teachers. Consequently, one should not expect increased total compensation to generate better teaching or better pupil services.

One of the things that Commissioner Burke said today that shocked me was that the decreased revenues that he sees on the horizon are going to lead to union demands **and management concessions** in the area of educational policy and management prerogatives. That trade-off does not make any sense. If an employer is broke, it doesn't mean that there is a need to give away the authority to make educational policy decisions. The two are not reasonable trade-offs. They are not in the same continuum whatsoever. Commissioner Burke is correct when he said that such trade-offs are ludicrous and bad policy.

Summary

Collective bargaining is a particular public policy. So is quality education. In my mind, they are in direct conflict with each other. I think that was a trade-off that was made by the Legislature, which establishes public policy for this state, as do other legislatures for the rest of the nation. That trade-off may have been unconscious by the Legislature, but it is, in fact, a trade-off.

Any educational benefits that one can point to which derive from a teacher collective bargaining contract are either **coincidental** to a certain teacher or union benefit, or they were created **in spite of** the collective bargaining process, not because of it. For example, you might find a contract clause that says, "All teachers shall attend six night meetings a year for parent conferences," which might be much better than what typical districts in the rest of the country are doing. What management had to do to get those six night meetings, however, was battle, through the bargaining process, either to retain those six nights per year, or to regain it after somebody else had given it away in prior bargaining. That's what I mean by an educational priority attained in spite of, not because of, the bargaining process. There may be parts of teacher contracts that are good for education, but you surely cannot state that without bargaining they wouldn't be happening in that school district.

So to evaluate the question, "Can collective bargaining improve the quality of education?", you have to evaluate it in the context of the totality of collective bargaining in public education, and all that it means. The answer to the question must be a resounding "No."

TEACHER SALARY GUIDES: THE STATE OF THE ART

This article was prepared by Mr. Fred Baron. Fred has just joined the NJSBA Labor Relations Department, where his principal duties will be as a negotiator for the NJSBA Negotiations Service. Fred comes to the NJSBA after 13 years as Director of Personnel for the Smithtown Central School District, an 800 teacher school system on Long Island, New York.

Everyone is familiar with the common structure of teachers' salary guides. Everyone knows that they provide schedules which determine the salaries to be paid to teachers, on ascending scales based on years of teaching experience and college degrees, in each of New Jersey's school districts. Most people believe that these guides are the products of negotiations between boards of education and teachers' associations.

I do not believe that salary guides are the products of bilateral negotiations. The thrust of this article is that they should be, and that they could be.

The subtitle of this article "The State of the Art" is misleading, and more than slightly presumptuous, when applied to the role of boards of education in determining the structure of teacher salary guides. An "art" is an activity in which skill and knowledge are applied in a conscious and purposeful manner to create a product or to bring about some end of which the "artist" has a clear conception or vision. This does not describe the traditional approach to salary guide construction, as we shall see.

Why Are Salary Guides Constructed As They Are?

The answer to this question that might be given by officials of any individual school system in any given year can probably be found among the following statements. (Pick one or more.)

1. "Tradition"
2. "We've always done it this way."
3. "We tried to change it in our last negotiation, but the union wouldn't consider any changes."
4. "It is easy to administer."
5. "I don't know. I never thought about it."

The fact is that, except for increasing or decreasing the number of experience steps, or adding new academic preparation columns, some tinkering around the edges with small changes involving longevity steps or, very rarely, a cautious venture into some kind of merit provision overlaid on the basic salary guide structure, there have been no changes in the structure for a very long time. In fact, it is fair to say that very few, if any, administrators, board members, or even teachers now in active service can remember when public school salary guides were different in structure from those under which school systems now operate.

In the earliest days of public education in the United States, the salaries of individual teachers were determined individually and unilaterally by boards of education at whose pleasure the teachers served. As school systems grew in size and complexity, and teacher education and certification imposed minimum standards for employment, the need for some internally consistent system for compensating teachers was recognized.

As professional education organizations grew in size and influence, they were successful in persuading more and more school systems to adopt salary schedules based upon academic preparation and years of service. This proliferation of salary guides progressed nearly to the level of universality many years before the duty of negotiating terms and conditions of employment was imposed on school boards and other public employers by state legislatures. All of these guides were adopted by boards in the days when teachers proposed and boards disposed.

In the days when enrollments were increasing and there was, or was perceived to be, a teacher shortage, salary guides were designed to attract and hold good teachers in a seller's market. They seemed to be good ideas at the time. When the teacher employment market (or markets) turned around in the late 60's and early 70's, it seemed appropriate to review the salary structures and modify them to meet the new economic conditions. But by this time the Public Employment Relations Law had been enacted; boards could no longer determine salaries unilaterally; teachers organizations were not interested in removing or qualifying the feature of automatic advancement through experience steps; and the structures that were in effect in 1968 were effectively locked in.

What is the Current Status of Teacher Salary Guides in New Jersey?

First, it will be useful to look at the average salaries paid to teachers at the entry levels and on the maximum steps on the salary guides, exclusive of longevity steps. In other words, this represents the range of county average salaries paid to teachers. See Table 1.

A visual inspection of Table 1 will disclose that the range (difference between the lowest and highest of county average BA, MA and MA + 30) among minimum salaries is small, compared to the range of the maximum salaries.

TABLE 1
SALARY GUIDE MEANS BY COUNTY
1980-81

COUNTY	BA MIN	BA MAX	MA MIN	MA MAX	MA 30 MIN	MA 30 MAX
Atlantic	10,813	19,925	11,745	21,207	12,541	22,449
Bergen	12,089	21,037	13,368	23,455	14,516	25,207
Burlington	11,971	19,228	12,887	20,405	13,770	21,825
Camden	11,583	19,388	12,480	20,353	13,055	21,105
Cape May	11,608	19,868	12,680	21,191	13,330	22,463
Cumberland	11,184	17,704	11,892	18,411	12,972	20,225
Essex	12,014	21,248	13,127	23,692	14,213	25,913
Gloucester	11,400	18,548	12,188	19,479	12,708	20,299
Hudson	12,244	20,993	13,368	22,368	14,436	23,682
Hunterdon	11,153	19,633	12,274	20,921	13,013	22,203
Mercer	11,259	20,702	12,085	21,826	12,619	22,735
Middlesex	11,470	21,534	12,447	22,664	13,108	23,506
Monmouth	11,192	21,261	12,242	22,539	13,001	23,456
Morris	11,791	20,719	13,154	23,211	14,187	24,570
Ocean	11,144	20,406	12,080	21,492	12,680	22,333
Passaic	11,277	20,322	12,267	21,905	13,233	23,404
Salem	11,425	19,155	12,330	20,107	13,040	21,346
Somerset	11,918	20,455	13,102	22,194	13,774	23,105
Sussex	11,299	19,568	12,458	21,076	13,422	22,250
Union	11,983	21,595	13,154	23,637	13,956	25,096
Warren	10,877	18,264	11,928	19,442	12,544	20,093

The following table presents the highest and lowest county average minimum and maximum salaries for each of the three preparation levels displayed in the preceding table and the difference, in dollars, between the highest and lowest average salaries.

TABLE 2
1980-81

	Highest County Average	Lowest County Average	Difference
BA MIN	12,244	10,813	1,431
BA MAX	21,595	17,704	3,891
MA MIN	13,368	11,745	1,623
MA MAX	23,692	18,411	5,281
MA 30 MIN	14,516	12,541	1,975
MA 30 MAX	25,913	20,093	5,820

The above table reports on county averages, which of course, by their nature mask the extremes within each county. While these extremes cannot be considered to be fairly representative, a brief glance at the highest and lowest reported salaries provided in salary guides in New Jersey is presented below in order to complete a comprehensive picture of salary guides.

TABLE 3
1980-81

	Highest Reported Salary	Lowest Reported Salary	Difference
BA MIN	14,150	9,300	4,850
BA MAX	24,036	14,200	9,864
MA MIN	15,983	10,300	5,683
MA MAX	27,206	14,800	12,406
MA 30 MIN	17,609	11,300	6,309
MA 30 MAX	28,580	17,849	10,631

It is important to bear in mind that, while interesting in itself, Table 3 has no general validity or representational value.

Table 2, on the other hand, illustrates an important and consistent pattern in salary guides. That is that the dollar difference in the range of average maximum salaries is greater than the dollar difference in the range of average minimum salaries by a factor of about 3 to 1. (BA Max:Min = 2.72:1; MA Max:Min = 3.25:1; MA 30 Max:Min = 2.95:1.) These ratios remain constant even if we discard the two highest and two lowest salaries in each column. This illustrates the obvious truth that dif-

ferences between districts in the dollars provided at the base entry level (BA minimum) increase dramatically at the maximum, especially where an across-the-board percentage increase has been applied to the salary guide. In fact, not only has this application of a percentage increase across the board been the common practice in New Jersey, but the percentage increases at the top steps in the last three years have actually been greater than at the minimum steps, thus increasing the range between minimums and maximums.

Commenting on this trend, the NJSBA **Analysis of Teachers' Contracts in New Jersey 1980-81/81-82** (from which Table 4 is reproduced) said:

Apparently, teachers are concentrating more on increases at the top of the guide than in prior years. This phenomenon may be attributed to the higher age and years of experience in an era of declining enrollment and RIF's. This discrepancy in average increase may also reflect the rising concern voiced by boards throughout the state over distortion in their teachers' salary guide in that there is an **increasing** gap between the minimums and maximums.

Two other observations should be made concerning this phenomenon:

1. It is the common practice in negotiations throughout the state to agree upon a sum of money to be applied to the salary guide, and then to allow the union to place this money in the guide **according to its own priorities**, and then submit the new guides for board approval.

2. The prevailing notion of equity in distributing salary increases appears to have been a straight percentage applied uniformly across the salary guide with an additional percentage increase provided at the top steps to compensate teachers at those steps for the supposed deprivation of not receiving a scheduled increment. This has the further effect of enhancing the financial prospects of other teachers approaching the top steps.

If the trend of the last three years were to be continued for a substantial period, the percentage spread between the minimum and maximum salaries on the guides would be greatly increased beyond present ranges. It is useful at this point to see what these ranges are in 1980-81. (See Table 5)

What is the significance of these percentages, if any? Looking at two pairs of counties which have nearly equal average minimum BA salaries, but different percentage ranges, the significance becomes apparent.

TABLE 4

	1977-78 Average	1978-79[1] Average	Avg.[2] Inc.	1979-80 Average	Avg. Inc.	1980-81 Average	Avg. Inc.	1981-82 Average	Avg. Inc.
BA MIN	10,187	10,754	5.6%	10,980	2.1%	11,573	5.1%	12,283	6.1%
BA MAX	17,108	17,999	5.2%	18,913	5.1%	20,195	6.8%	21,724	7.6%
MA MIN	11,101	11,533	3.9%	11,979	3.9%	12,625	5.4%	13,439	6.4%
MA MAX	18,394	19,401	5.5%	20,369	5.0%	21,719	6.6%	23,415	7.8%
MA + 30 MIN	11,933	12,358	3.6%	12,777	3.4%	13,490	5.6%	14,312	6.1%
MA + 30 MAX	19,768	20,756	5.0%	21,609	4.1%	23,072	6.9%	24,783	7.4%

1 Figures for earlier years are available from previous publications
2 "Avg. Inc." refers to the total increase over the previous year's average salary, and does not refer to the average increment.

TABLE 5
Percentage Ranges Between County Average Minimum and Maximum Steps at Each Preparation Level

(Percent of Minimum Salary by Which the Maximum Exceeds the Minimum)

COUNTY	% RANGE BA	% RANGE MA	% RANGE MA 30
Atlantic	84.28	80.56	79.0
Bergen	74.02	75.46	73.65
Burlington	60.63	58.34	58.5
Camden	67.38	63.09	61.66
Cape May	71.15	67.12	68.52
Cumberland	58.3	54.82	55.91
Essex	76.86	80.49	82.32
Gloucester	62.71	59.82	59.73
Hudson	71.46	67.33	64.05
Hunterdon	76.03	70.45	70.63
Mercer	83.86	80.61	80.16
Middlesex	87.75	82.09	79.33
Monmouth	89.98	84.12	80.41
Morris	75.71	76.45	73.19
Ocean	83.1	77.92	76.13
Passaic	80.21	78.57	76.85
Salem	67.66	63.07	63.7
Somerset	71.55	69.39	67.74
Sussex	73.18	69.18	65.77
Union	80.22	79.69	79.83
Warren	67.91	63.0	60.19

TABLE 6

	Average BA Minimums	Average Percent Range: BA	Average BA Maximums
Union	11,983	80.22	21,595
Burlington	11,971	60.63	19,228
Monmouth	11,192	89.98	21,261
Cumberland	11,184	58.3	17,704

It is obvious that the magnitude of the percentage range between minimums and maximums has a powerful effect upon the maximum salaries where the minimum salaries are equal or similar.

Another possible determinant of maximum salaries is the length of the guide, i.e. the number of steps or years of service it takes to reach maximum. The number of increments provided at the BA, MA, and MA + 30 levels across the state is quite diverse, as shown in Table 7.

TABLE 7
Number of Increments in Salary Guides
Number of Districts Providing:

	Less than 10	10-12	13-14	15	16-17	18-20	More than 20
BA (N = 487)	3	69	176	100	99	31	9
MA (N = 480)	1	51	170	99	114	35	10
MA + 30 (N = 361)	1	32	126	73	89	34	10

For the purposes of this analysis, I shall assume that the average New Jersey teacher will acquire a master's degree some time in his or her career, and, therefore, consider that the salary range for the generic job title "teacher" is from the BA minimum step to the MA maximum step on the guide, and focus attention on the MA maximum salaries. This does not take into account the presence or absence of longevity steps which are paid to a teacher at some time after he or she has been at the maximum step for some time. They can be more or less important as determinants of cost, depending upon the amounts paid and the number of years required for eligibility. The county average MA maximum salaries were indicated in Table 1 above.

Two structural characteristics were identified as possibly being associated with the amount of the maximum salary: the number of increments, and the percentage ranges between the BA minimum salaries and the MA maximum salaries based upon the BA minimum.

A positive Pearson correlation (0.33030) was found to exist between the number of increments and the amount of MA maximum salaries provided in salary guides of 461 districts. This means that a larger than average number of increments in a guide is more likely than not to be associated with a high MA maximum salary. However, the magnitude of this correlation does not support a conclusion that the number of increments is, in itself, the most important determinant of the amount of the maximum salary. In fact, since a larger number of increments has the effect of postponing the date when a teacher will reach the maximum step, the total cost of that teacher's services is diminished to some extent. The diminution caused by this postponement may, in extreme cases, totally offset the cumulative cost of apparently high maximum salaries, but it is fair to assume that in the majority of cases, this will not be the case.

The second characteristic, the range between the BA minimum salary and the MA maximum salary, was found to be very highly correlated with the amount of the MA maximum.

Table 8 displays the county average ranges between the BA minimum salaries and the MA maximum, in descending order. The percentage to the right of the name of each county is the percentage of the county average BA minimum by which the county average MA maximum exceeds the county average BA minimum.

TABLE 8
1980-81
Percentage Range Between County Average BA Minimum Salaries and County Average MA Maximum Salaries

1. Monmouth	101.4%
2. Middlesex	97.6%
3. Union	97.26%
4. Essex	97.21%
5. Morris	96.85%
6. Atlantic	96.14%
7. Passaic	94.25%
8. Bergen	94.02%
9. Mercer	93.84%
10. Ocean	92.85%
11. Hunterdon	87.58%
12. Sussex	86.53%
13. Somerset	86.22%
14. Hudson	82.69%
15. Cape May	82.55%
16. Warren	78.74%
17. Salem	76.00%
18. Camden	74.71%
19. Gloucester	70.88%
20. Burlington	70.46%
21. Cumberland	64.62%

The Pearson correlation between the county average BA min/MA max ranges and the county average MA max salaries was .85052. This very high correlation supports the conclusion that the magnitude of this range is the most powerful single structural determinant of MA maximum salaries provided that the BA minimums upon which they are based are not grossly unequal.

In order to determine whether the county average correlation was artifically high because of the masking or suppression of extreme cases, we analyzed the same 461 districts which were used to analyze the effects of the number of increments. In this larger sample, the Pearson correlation between the BA min/MA max range and the MA max salaries was found to be .78119. This also is a very high correlation which confirms the conclusions found in our analysis of county average figures.

The relationships between MA maximum salaries and several variables which were separate from and independent of the structure of salary guides were also reviewed.

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TABLE 9 Average MA Maximum Salaries by Enrollment Groups		
Elem. 0-499	(N = 122)	$19,865
Elem. 500-999	(89)	21,697
Elem. 1000-1499	(29)	21,710
Elem. 1500-1999	(13)	22,592
Elem. 2000 +	(13)	22,394
K - 12 0-2999	(96)	22,354
K - 12 3000-5999	(56)	22,976
K - 12 6000 +	(38)	22,956
Sec. 0-2999	(39)	21,982
Sec. 3000 +	(7)	21,914

With the exception of very small elementary school districts which tend to have low maximum salaries the average maximum salaries are within a relatively narrow range. There appears to be a tendency for K - 12 districts to pay the highest salaries, with secondary districts second and elementary districts lowest. Within each category, there appears to be a positive correlation between maximum salaries and enrollment up to a point, beyond which there is a slight diminution.

TABLE 10 Average MA Maximum Salaries by Budget Caps	
Low Cap Quartile (107 districts)	$23,042
Low/Medium Quartile (120 districts)	22,102
Medium/High Quartile (115 districts)	21,337
High Cap Quartile (119 districts)	20,495

The relative amounts of the average maximum salaries of the four cap groups displayed in Table 10 are predictable given that high cap districts have generally been low spending districts in the past. The average salaries are, as would be expected, consistently inversely proportionate to the size of the caps.

Table 11, which follows, also indicates that higher salaries tend to be paid by wealthier districts.

TABLE 11 Average MA Maximum Salaries by Wealth (Equalized Valuation Per Pupil)	
Low Wealth Quartile	$20,712
Low/Medium Wealth Quartile	21,258
Medium/High Wealth Quartile	22,193
High Wealth Quartile	22,723

Where Do We Go From Here?

What purposes do we want our systems of compensating teachers to serve? How well do salary guides, as now constructed, serve these purposes?

Salary guides buttress the general assumption that there is an occupation called "teaching," that there is an essential similarity and an essential equality of value, or economic worth, among "teachers within a district," and that there is single employment market for "teachers," in which there is currently an oversupply and in which, 12 to 20 years ago, there was a shortage. **In fact, there is a cluster of related but different occupations which come within the meaning of the generic title "teacher."** Physics teachers, physical education teachers, instrumental music teachers, kindergarten teachers and German teachers are not interchangeable. They are not in the same employment market. There are as many different markets as there are subjects and specialties in the curriculum. As every superintendent and personnel director knows, there is not now an oversupply of mathematics teachers or science teachers, and there never has been an oversupply of industrial arts teachers, to mention just a few.

Yet the single salary guide, applicable to all teachers, totally ignores the realities of supply and demand, and provides the same initial salary for elementary classroom teachers, who are in great oversupply, as for physics and industrial arts teachers, of whom there is an actual shortage. A rational system would be sufficiently responsive to market conditions to enable school districts to offer initial salaries that are high enough to attract teachers in the scarcer categories while not requiring them to pay similar premiums to teachers who are in categories in which there are now great pools of candidates anxious to be employed at current entry level salaries.

Controlling Initial Placement on the Guide

What can be done about this? Can we, or should we, negotiate different salary guides for different kinds of teachers? The reality is that teachers' unions are unlikely to agree with any change from the single salary guide for all teachers. But if boards in negotiating contracts retain or recover complete discretion **in the initial placement** of newly employed teachers on the salary guide, and **use this discretion** to authorize their superintendents to attract a new teacher in a scarce category by offering a beginning salary at the second or even higher step rather than the first step, they can conduct their recruiting effectively in the several employment markets, within the limits of current salary guides.

This is equally important in attracting experienced teachers. The board should not be prevented by its contract from giving a physics teacher full credit for eight years of teaching and placing him on the ninth step, while giving a social studies teacher with eight years of teaching credit for only four years and placing him on the fifth step, if the salary provided by that step is acceptable to him.

In order to attract and retain qualified and competent teachers, there should be a range of salaries for teachers within which an individual teacher's salary should move, and each teacher should have a reasonable expectation that he or she will continue to progress from the low end to the high end. Salary guides supply such a range and, in the current employment markets, generally discourage a teacher from changing employment after he or she has been in one place for seven or eight years.

How wide should this range be? If we accept the notion that a teacher normally works for 35 years or so, in the same capacity (e.g., as a physical education teacher or math teacher) and, somewhere along the line, acquires a master's degree, we can regard the difference between the BA minimum and the MA maximum salary on the guide to be this range for most teachers. The mean range (BA minimum-MA maximum) in New Jersey is 88.19% of the starting salary, (i.e. the MA max exceeds the BA min by 88.19% of the BA min.) The narrowest range provided by any district is 36.53% and the widest is 150.1%.

There is, obviously, no magic number that we can pull out of the air, as the optimum range, but we could, and should, select occupations that are considered comparable to teaching and determine the ranges paid to people in these occupations who are not promoted to higher levels of responsibility and authority. This should be done with a number of occupations (excluding those whose members are self-employed and who set their own fees) and with comparable job titles in several large companies and in government service. A pattern would emerge from such an examination and the ranges of current teacher salary guides should be compared with that pattern. I suspect that 36.53% will appear to be too narrow; I am sure that 150.1% will appear to be much too wide; and I am reasonably sure that 88.19% (the average for New Jersey teachers) will also appear to be unnecessarily wide.

Reducing the Range Between Minimums and Maximums

If such an analysis persuades a board of education that the range provided in its salary guide is too wide, it should attempt to reduce the range. It is obvious that an agreement with the union to reduce the top salaries is most unlikely. Therefore, **a reduction in the range would have to be accomplished by raising the salaries at the bottom of the guide more, in a relative sense, than at the top of the guide.** Following is an example of this.

Let us suppose that a settlement, providing an average salary increase of 8%, has been reached. Assume, further, that the current salary range is from $12,000 to $24,000 (BA min to MA max) and that the average salary is $20,000 and that 2% is required to pay increments, leaving 6% to be applied to the guide. This 6% amounts to an average of $1,200 per teacher. If the 6% is applied uniformly across the schedule, the bottom step will increase by $720 and the top step by $1,440 and the range (100%) will not be altered. However, if the dollars are apportioned equally to each step on the schedule ($1,200 each), the new range will be from $13,200 to $25,200 and the percentage range is reduced from 100% to 91%. If this process were repeated for a number of years, with 8% total money settlements each year, the results would be as indicated below:

	Required for Increment[1]	BA Min	MA Max	Average Salary[2]	Range
First Year	2.0%	13,200	25,200	21,600	91%
Second Year	1.9%	14,518	26,518	23,328	82.7%
Third Year	1.8%	15,964	27,964	24,774	75.17%
Fourth Year	1.7%	17,525	29,525	26,345	68.47%
Fifth Year	1.6%	19,211	31,211	28,031	62.46%

If a board wishes to modify the structure in this way (or in any other way) it must not abdicate the responsibility and opportunity of determining, with the union's agreement, where the negotiated money will be placed in the salary guide. Ideally, a completed new salary guide should be a part of the memorandum of agreement. Recognizing that this might be impracticable in many cases, the board should **not** leave the formation of salary guides distributing the agreed upon money to the union, and limit its participation to giving its approval upon assurance by the board secretary that the guide presented by the union can be implemented within the negotiated increase. The board's negotiator should be given guidance as to the general direction in which it wishes the structure of the guide modified, and a directive to take an active part in the formation of a new guide that moves in that direction. Having done this, the board should not expect to be 100% successful, since the union is likely to have strongly held ideas on the subject. But, at the very least, this will prevent the continuation of the annual increase in the range reported in the last three years throughout the state. Also, the board should realize that any extensive structural change will not be accomplished in a single year, nor probably even in a single multi-year contract. Significant alteration in the structure of a salary guide will, as a practical matter, only be achieved by a series of relatively small changes through negotiations over several years.

Merit Pay: Solution or Illusion?

One of the laments most frequently heard about salary guides is their automatic and imperative quality, which reward all teachers alike, whether their performance be excellent, average, or poor. The idea that teachers' and other employees' compensation should bear some relation to the quality of service they render is compelling, logical, attractive and old. It is obviously true that all teachers are not equally successful, talented or proficient. Also, there is an obvious element of fairness in the notion that superior teachers ought to be able to earn higher salaries than average or inferior teachers.

Even though many teacher representatives might agree with the two propositions stated above, they offer

1 This number decreases because we assume that more teachers will be reaching the maximum salary each year, and therefore the number of employees receiving increments is decreasing.

2 Note that this column is not affected by flat dollar or across the board percentage increases. Your average salary will be the same under either formula.

many objections which boil down to the following:

1. Teaching (they say) is a complex function which is extremely difficult, if not impossible, to evaluate objectively. (Subjective evaluation is generally not acceptable to them).

2. Even if it were possible to evaluate teaching, they would not trust administrators and boards of education to evaluate fairly and to have their salaries dependent upon such evaluation.

3. They fear that the money that would go into additional compensation for the meritorious teachers would have to be taken from the funds allocated for salaries and, thus, have the effect of diminishing the prospective salaries of the remaining teachers.

It is possible to negotiate some kind of discretionary payment for meritorious or outstanding performance. But my observation is that a merit system would be substantially more expensive than a conventional salary system. This is true because teachers will insist upon a competitive automatic salary guide applicable to all teachers as a condition precedent to authorizing the board to make differential payments for meritorious performance. And they will usually get it (or keep the one they have, with appropriate increases) because the board is without power to change it unilaterally. Secondly, if merit increases are to truly serve as incentives, the salary differentials provided must be substantial. A $200 or $300 increase will not suffice.

Also, a merit system could not be negotiated, and would not serve any useful purpose unless both of the following conditions are present:

First, the teachers would have to have more than the average amount of confidence in the ability of administrators and supervisors to make the required judgments, and trust that they will do so fairly;

Second, the administrators and supervisors should actually be not only able but **willing**, to make and be identified with these judgments, some of which will not enhance their popularity.

Summary

Boards may wish to review the number of steps provided in their guides, and the presence or absence of longevity steps. They may also wish to reevaluate the incentives for professional improvement or graduate study (which are related but not identical) in their guides. They may wish to modify the rectangular structure of their guides by varying the length of columns, or to modify the structure in other ways, consciously, to encourage, or discourage, certain behavior by teachers. The board should wish to provide maximum discretion for itself and the administration. It should be aware that such discretion must be used, or it will be worthless and may cease to exist.

To the extent that boards are conscious of the extended effects of decisions about the structure of salary guides, and purposeful and methodical in the application of their, or their agents', knowledge and skill to bring about what will seem to them to be more rational and desirable structures, it will be appropriate to speak of the "state of the art" of salary guide construction.

A SELECTED BIBLIOGRAPHY

BOOKS

ELKOURI, FRANK and EDNA ASPER ELKOURI. **How Arbitration Works.** Third edition. Washington, D.C.: The Bureau of National Affairs, 1973, 819 pp.

GASWIRTH, MARC, GARRY WHALEN and CATHLEEN OTTO. **Administering the Negotiated Agreement.** Trenton, New Jersey: New Jersey School Boards Association, 1980, 200 pp.

IGOE, JOSEPH A. and DOUGLAS M. FLYNN. **The School Board Negotiator: Guidelines for Effective Teacher Negotiations.** Albany, New York: Thealan Associates, Inc., 1972, 189 pp.

JOHNSON, HOMER M. and WILLIAM W. MONAHAN. **School Strike: Preventive and Emergency Procedures.** Morristown, New Jersey: Robert F. Strauss and Associates, 1975, 92 pp.

LIEBERMAN, MYRON. **Bargaining.** Chicago, Illinois: Teach 'em Inc., 1979, 333 pp.

O'NEIL, ROY. **Counterproposals for School Boards in Teacher Negotiations.** Aurora, Illinois: Countersearch, 1972, 255 pp.

PATTERSON, LEE T. and JOHN LIEBERT. **Management Strike Handbook.** Chicago Illinois: International Personnel Management Association, 1974, 43 pp.

SIMKIN, WILLIAM E. **Mediation and the Dynamics of Collective Bargaining.** Washington, D.C.: The Bureau of National Affairs, Inc., 1971, 410 pp.

WHALEN, GARRY M., CATHLEEN OTTO and BRUCE TAYLOR. **The Public Employment Relations Law.** Trenton, New Jersey: New Jersey School Boards Association, 1979, 103 pp.

WOLLETT, DONALD H. and ROBERT D. CHANIN. **The Law and Practice of Teacher Negotiations.** Washington, D.C.: The Bureau of National Affairs, Inc., 1970, 1567 pp.

Work Stoppage Strategies. AASA Executive Handbook Series VI. Arlington, Virginia: American Association of School Administrators, 1975, 55 pp.

BULLETINS, PAMPHLETS, REPORTS and ARTICLES

AMERICAN ARBITRATION ASSOCIATION, **Voluntary Labor Arbitration Rules of the American Arbitration Association.** New York, New York: 8 pp.

GASWIRTH, MARC. "The Board President and Labor Relations," **Handbook of Effective Leadership.** Trenton, New Jersey: New Jersey School Boards Association, 1980.

GILROY, THOMAS P. **Dispute Settlement in the Public Sector: The State of the Art.** Washington, D.C.: Public Sector Labor Relations Information Exchange, United States Department of Labor, United States Government Printing Office, 1972, 141 pp.

GROSS, ERNEST. **Public School Law and Collective Negotiations: Problems in Interpretations.** New Brunswick, New Jersey: Institute of Management and Labor Relations, University Extension Division, Rutgers University, March 2, 1972, 14 pp.

KUNDER, LINDA H. **Contingency Planning for Teacher Strikes.** Arlington, Virginia: Educational Research Service, Inc., 1980, 58 pp.

OTTO, CATHLEEN. **Costing Out the Labor Agreement.** Trenton, New Jersey: New Jersey School Boards Association, 1979, 40 pp.

SIEGAL, BOAZ. **Proving Your Arbitration Case.** Washington, D.C.: Bureau of National Affairs, Inc., 1967, 48 pp.

WARY, CURT. **An Analysis of Teachers' Contracts in New Jersey, 1980-81/1981-82.** Trenton, New Jersey: New Jersey School Boards Association, 1981, 107 pp.

ZACK, ARNOLD. **Understanding Grievance Arbitration in the Public Sector.** Washington, D.C.: U.S. Department of Labor, 1974, 37 pp.

— **Understanding Factfinding and Arbitration in the Public Sector.** Washington, D.C.: U.S. Department of Labor, 1974, 38 pp.

REGULAR PUBLICATIONS DEALING WITH NEGOTIATIONS

(These may be ordered on a subscription basis from the respective publisher)

American Arbitration Association. **Arbitration In The Schools.** 140 West 51 Street, New York, New York 10020, issued monthly.

Baywood Publishing Company, Inc. **Journal Of Collective Negotiations In The Public Sector.** 43 Central Drive, Farmingdale, New York 11735, issued quarterly.

Bureau of National Affairs, Inc. **Government Employee Relations Report.** Washington, D.C. 20037, issued weekly.

Labor Relations Press. **New Jersey Public Employee Reporter.** P.O. Box 479, Fort Washington, Pennsylvania 19034, issued biweekly.

National School Boards Association and American Association of School Administrators. **National School Labor Relations Service.** 1620 Eye Street N.W., #616, Washington, D.C. 20006, issued monthly.

Negotiations Management Service, a Division of Educational Services Bureau, Inc. **Negotiations Management.** 1835 K Street, N.W., Washington, D.C. 20006, issued monthly during the school year.

New Jersey School Boards Association. **Index and Analysis of PERC Decisions.** P.O. Box 909, 315 West State Street, Trenton, New Jersey 08605, monthly supplements, semi-annual index updates.

Personnel Administration Service, a Division of Educational Service Bureau, Inc. **Personnel News For School Systems.** 1835 K Street, N.W., Washington, D.C. 20006, issued monthly.

United States Department of Labor, Bureau of Labor Statistics. **Monthly Labor Review.** Documents, United States Government Printing Office, Washington, D.C. 20402, issued monthly.

DECISIONS AFFECTING NEGOTIATIONS

Listed below are a number of court and PERC decisions which affect negotiations.[1]

AUTHORITY OF A BOARD'S NEGOTIATING TEAM

Bergenfield Board of Education and Bergenfield Education Association. PERC No. 90, 1 NJPER 44. *Unless otherwise noted, a board's negotiating team can bind the entire board to a tentative agreement.*

GOOD FAITH NEGOTIATIONS

City of Plainfield and Plainfield P.B.A. Local 19. PERC No. 78-87, 4 NJPER 4130. *Parity ("Me-too") clauses are illegal and unenforceable.*

County of Middlesex (Roosevelt Hospital) and Communications Workers, Local 1065 and Roosevelt Hospital Association, Inc., PERC No. 81-129, 7 NJPER 12118. *Public employer must suspend bargaining during the pendency of a bonafide representation dispute.*

State v. N.J. Council of State College Locals, 141 N.J. Super 470 (App. Div. 1976). *The obligation to negotiate in good faith does not include an obligation to make a concession on any given issue or to agree to the proposal of the other party.*

SCOPE OF NEGOTIATIONS

Bethlehem Township Board of Education and Bethlehem Township Education Association, 177 N.J. Super. 479, certif. den. ____ N.J. ____ (1981). *Tenured teacher evaluation procedures are negotiable as long as contracts do not conflict with State Board of Education rules. Related educational policy questions are non-negotiable.*

Burlington County College Faculty Association v. Board of Trustees, 64 N.J. 10 (1973). *The establishment of the school calendar is a non-negotiable management decision.*

Carteret Education Association and Carteret Board of Education, unpublished App. Div. opinion, November 10, 1980. *The decision to assign teachers to after school workshops that do not involve student supervision is a mandatorily negotiable term and condition of employment.*

Cinnaminson Township Board of Education v. Cinnaminson Teachers' Association, affirmed in part, unpublished App. Div. opinion, June 1, 1979, cert. denied 81 N.J. 341 (1979). *The decision to RIF, the procedural details, and the incidental "impact" are non-negotiable.*

City of Jersey City v. Jersey City Police Officers' Benevolent Association, ____ N.J. Super. ____ (App. Div., May 21, 1981) and **State of New Jersey v. Local 195, IFPTE and Local 518, SEIU,** ____ N.J. Super. ____ (App. Div., June 2, 1981). *These two cases, taken together, hold that neither the reasonableness of disciplinary action by an employer nor the standards for discipline of employees may be negotiated or submitted to binding arbitration.*

Commercial Township Education Association and Commercial Township Board of Education, PERC No. 80-20, 5 NJPER 10195. *A board-teacher liaison committee that discusses non-terms and conditions of employment is itself a mandatory subject as long as the board retains final authority to exercise its managerial discretion.*

Dennis Township Board of Education and Dennis Township Education Association, PERC No. 80-157, 6 NJPER 11167. *Initial placement of teachers on salary guide is negotiable, and therefore arbitrable.*

Englewood Board of Education and Englewood Teachers' Association, 150 N.J. Super. 265 (App. Div., 1977). *The statutory power to reduce personnel cannot be the subject of negotiation or arbitration.*

Fair Lawn Education Association v. Fair Lawn Board of Education v. Teachers' Pension and Annuity Fund, Division of Pensions, Department of Treasury, State of New Jersey, 161 N.J. Super. 67, affirmed, 79 N.J. 574 (1979). *Retirement incentive plans are illegal.*

Fairview Board of Education and Fairview Education Association, PERC No. 80-18, 5 NJPER 10193. *A contract provision that holds that a violation of evaluation procedures for non-tenured teachers is grounds for reinstatement is not negotiable.*

1 PERC or the courts can alter case law at any time. Before relying on these decisions, please check on whether they are currently good law. In addition, this is not an exhaustive list. For example, as of this writing, there have been over 300 PERC scope of negotiations decisions. Only a few are listed here.

Hazlet Township Board of Education v. Hazlet Township Teachers Association and Public Employment Relations Commission, unpublished App. Div. opinion March 27, 1980. *The application of evaluation criteria is not negotiable or arbitrable.*

Hunterdon Central High School Board of Education v. The Hunterdon Central Regional High School Teachers' Association, 56 N.J. 43 (1979). *Payment for religious observance without charging the leave to general personal leave or vacation time is unconstitutional.*

Local 195, IFPTE, AFL-CIO and State of New Jersey, 176 N.J. Super. 85 (App. Div. 1980). *Subcontracting unit work to an outside contractor is not a required topic for negotiations.*

Long Branch Education Association, Inc. v. Board of Education of the City of Long Branch, Monmouth County, 150 N.J. 262 affirmed, 73 N.J. 461 (1977). *Assignment of teachers to lunchroom supervision is an educational policy decision.*

Maywood Board of Education and Maywood Education Association, 168 N.J. Super. 45, cert. denied 81 N.J. 292 (1979). *Impact bargaining on RIFs is illegal.*

Newark Board of Education and Newark Teachers' Union, Local 481, A.F.T., AFL-CIO, unpublished App. Div. opinion, Feb. 26, 1980. *Change in preparation periods constitutes a change in workload and is, therefore, mandatorily negotiable.*

Northern Burlington County Regional Board of Education and Northern Burlington County Regional Teachers Association, PERC No. 80-151, 6 NJPER 11154. *The format and submission of lesson plans are non-negotiable and non-arbitrable.*

Paterson Police P.B.A., Local No. 1 v. City of Paterson, decided July 16, 1981, (Supreme Court of New Jersey). *Even though a permissive category of negotiations for police and firefighters is constitutional, this category is narrowly restricted so as to preclude negotiations on matters which place "substantial limitations" on the governmental body's policy making authority.*

Pennsville Board of Education and Pennsville Education Association, PERC No. 81-125, 7 NJPER 12111. *A past practice of permitting non-resident teachers to send their children to the district's schools tuition-free cannot be changed without prior negotiations.*

Piscataway Township Board of Education v. Piscataway Maintenance and Custodial Association, 152 N.J. Super. 235 (App. Div. 1977); **Ramsey Teachers Association v. Board of Education of the Borough of Ramsey,** unpublished App. Div. opinion, May 30, 1980. *Blanket, extended sick leave contract clauses are illegal and unenforceable.*

Piscataway Township Board of Education v. Piscataway Township Principals' Association, 164 N.J. Super 98 (App. Div., 1978). *The decision to reduce the work year from 12 months to 10 months is a required topic of negotiations.*

Ramapo-Indian Hills High School District Board of Education and Ramapo-Indian Hills Education Association, 176 N.J. Super 35 (App. Div. 1980). *Decision to assign teachers to extra-curricular activities and the work hours normally associated with these activities are non-negotiable.*

Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144, (1978). *C.123 did not create a permissive category. Transfers are non-negotiable.*

Rutgers, the State University v. Local 1761, AFSCME, Council 52 and the Public Employment Relations Commission, Docket No. A-3651-78, unpublished opinion, Superior Court of N.J. Appellate Division, decided July 1, 1980. *Shifting unit work from employees within a bargaining unit to other employees outside the unit is a mandatory subject of negotiations and is legally arbitrable.*

State of New Jersey v. State Supervisory Employees Association, State of New Jersey v. Local 195 IFPTE and Local 518 SEIU, 78 N.J. 54,(1978). *General statutes giving authority to employers do not render negotiations over terms and conditions illegal. Specific statutes and regulations that govern terms and conditions of employment cannot be abrogated by contract.*

Teaneck Board of Education and Teaneck Teachers Association, 161 N.J. Super 75 (App. Div., 1978). *Criteria for evaluation and the content of evaluations cannot be negotiated.*

SCOPE OF THE GRIEVANCE PROCEDURE

Bernards Township Board of Education v. Bernards Township Education Association, 79 N.J. 311 (1979). *Withholding of an increment is not grievable to binding arbitration. Parties may negotiate advisory arbitration procedures to cover management prerogatives affecting individual emloyees.*

Township of West Windsor v. Public Employment Relations Commission and P.B.A. Local 130, 78 N.J. 98, (1978). *The terms of all negotiated grievance procedures must "cover" grievances concerning the interpretation, application or violation of policies, agreements and administrative decisions affecting terms and conditions of employment.*

EMPLOYER CHANGES IN TERMS AND CONDITIONS

New Jersey Institute of Technology and Newark College of Engineering Professional Staff Association, PERC No. 80-27, 5 NJPER 10202. *Where increases in workload are "inescapably intertwined with and inseparable from" an educational policy decision, negotiations over the increased workload are not required.*

Rutgers, The State University and AFSCME, Council 52 and Local 1761, PERC No. 80-26, 5 NJPER 10201. *Clear contract language can constitute a waiver by the union to its right to negotiate a change in working hours.*

Woodstown-Pilesgrove Regional High School District, Board of Education of v. Woodstown-Pilesgrove Regional Education Association, 81 N.J. 582 (1980). *The effect of a management decision on terms and conditions of employment is no longer automatically negotiable, but would depend upon whether the dominant issue primarily involves either an educational policy decision or a term and condition of employment.*

DISCRIMINATION DUE TO UNION ACTIVITY

Brookdale Community College and George S. Abel, unpublished App. Div. opinion, Jan. 9, 1980. *College's denial of promotion was not justified by a substantial or legitimate business interest and was, therefore, due to employee union activity.*

Haddonfield Borough Board of Education and Haddonfield Supportive Staff Association, PERC No. 77-36, 3 NJPER 71. *PERC's test for finding a violation of Section 5.4 (a)(3) of the PERC Law is defined.*

Laurel Springs Board of Education and Mary Becker, PERC No. 78-4, 3 NJPER 228. *"Totality of conduct" test for finding violations of 5.4(a)(3) and (a)(1) is described.*

North Warren Regional Board of Education and North Warren Education Association, PERC No. 79-9, 4 NJPER 4187. *Employers retain the right to discharge, discipline or refuse to promote employees for reasons unrelated to union activities. The burden is on the union to prove a violation.*

DEPARTMENT CHAIRPERSONS AS SUPERVISORS

Cinnaminson Township Board of Education and Cinnaminson Township Teachers' Association, D.R. No. 81-39. 7 NJPER 12122. *Department heads may be excluded from a teachers' bargaining unit when the board adopts a new job description which places department heads in a supervisory capacity over teachers.*

River Dell Board of Education and River Dell Education Association, PERC No. 78-85, 4 NJPER 4128. *Department Chairpersons are excluded from a bargaining unit with teachers due to "conflict of interest" arising out of teachers' strike.*

MATERNITY LEAVE, CHILDCARE AND SICK LEAVE BENEFITS

Board of Education of Cinnaminson v. Silver, 1976 S.L.D. 738, aff'd, State Board, 1979 S.L.D. (April 4). *Employees are entitled to use their accumulated sick leave because of pregnancy-related disability.*

Castellano v. Linden Board of Education, 79 N.J. 407 (1979). *Employers may neither deny employees with pregnancy-related disabilities the right to use accumulated sick leave nor establish a mandatory leave policy for pregnant teachers.*

Dyson v. Montvale Board of Education, 1980 S.L.D. ____ (July 21), affirmed by the State Board on March 3, 1981. *A board may place an employee anticipating a disability leave on an involuntary unpaid leave prior to the disability period in order to protect educational continuity and avoid mid-semester staffing changes, but the employee will remain entitled to sick leave pay for the period of actual disability.*

Gilchrist v. Board of Education of Haddonfield, 155 N.J. Super 358 (App. Div., 1976). *Nonrenewal of non-tenured pregnant teachers based on board policy minimizing classroom instruction interruptions is not discriminatory.*

Longandro v. Cinnaminson Township Board of Education, 1979 S.L.D. ____, August 6, affirmed in part by the State Board on June 27, 1980; **Headley v. Board of Education of the Township of Jefferson,** 1980 S.L.D. ____ (June 27), reversed by the State Board on February 4, 1981. *An employee who takes a voluntary leave of absence prior to his or her period of actual disability is not entitled to use of sick leave during the period of actual disability.*

NJSBA ANALYSIS OF THE NJEA SAMPLE AGREEMENT FOR 1982-83

Again this year the NJEA has not revised its Sample Agreement. This reflects the fact that fewer local teacher unions rely heavily upon it. We will continue to analyze the NJEA Sample Agreement annually, because this format provides an easy point of reference for boards when checking on the legality or wisdom of agreeing to a local union proposal and when reviewing the district's current contract in preparation for negotiations.

As in every prior year, we have made substantial changes in our analysis because of changing trends in bargaining and new interpretations of law by PERC and the courts.

Because the importance of case law in the bargaining process has increased dramatically since the Supreme Court's *Ridgefield Park* decision in August of 1978, we have changed the format of our analysis. Besides noting the practical problems with certain clauses, we have cited over 35 specific PERC or court cases which affect the legality of particular contract articles. This is not intended to transform all our readers into quasi-lawyers; but it will help the board negotiator who needs more detail on the negotiability of a union demand to find the appropriate case.

As always, you should analyze contract demands at issue in your district's negotiations in terms of their meaning and effect when applied to your particular school system.

On the left of each page appears the text of the NJEA Sample Agreement. On the right of each page appears our commentary. References to **"PERC"** refer to **What Every School Board Member Should Know About the PERC Law.** (copyright 1979, NJSBA); **Administering the Negotiated Agreement**, (copyright 1980, NJSBA), frequently referred to in our analysis of the Sample Agreement's grievance procedure, is the newest addition to our School Board Library Series.

PREAMBLE

This Agreement entered into this day of 19 , by and between the Board of Education of , the City of , New Jersey, hereinafter called the "Board," and Association, hereinafter called the "Association."

This section notes the date the contract was entered and is standard and acceptable.

WITNESSETH:

WHEREAS, the Board and the Association recognize and declare that providing a quality education for the students of the School District is their primary aim and that the character of such education depends predominately upon the quality of teaching, the availability of materials, the functional utility of facilities, the release of imagination in planning, the application of democratic processes in administration, and the maintenance of high morale among the teaching faculty, and

WHEREAS, the members of the teaching profession are particularly qualified to advise the formulation of policies and programs designed to improve educational standards, and

WHEREAS, the Board has an obligation, pursuant to Chapter 303, Public Laws 1968 to negotiate with the Association as the representative of employees hereinafter designated with respect to the terms and conditions of employment, and

The primary purposes of a labor agreement are: (1) to state the terms and conditions of employment of employees; (2) to place limitations on the ability of the employer to change those terms and conditions; and (3) to specify certain kinds of duties or requirements of employees. If a clause in the contract does not fulfill one or more of these purposes, it is extraneous.

The first two whereas clauses are illegal topics of negotiation. **Fairview Board of Education**, PERC No. 80-18.

The clauses in this section are extraneous. It is better deleted inasmuch as it may be used by an arbitrator or other third party to modify the meaning of the Agreement. The General Counsel of the NEA states: "*From a strict legal point of view they are not necessary. They may, however, be viewed by an arbitrator or a court as providing a clue to the intention of the parties in construing ambiguous provisions in the agreement. If such statements are to be included, therefore, the language should be carefully drafted.*" (See **The Law and Practice of Teacher Negotiations**, 3:16, cited in **Bibliography**, earlier.)

WHEREAS, the parties have reached certain understandings which they desire to confirm in this Agreement, be it

RESOLVED, in consideration of the following mutual covenants, it is hereby agreed as follows:

This is standard language.

Article I, *Recognition*

A. **Unit**

The Board hereby recognizes the Association as the exclusive and sole representative for collective negotiation concerning grievances and terms and conditions of employment for all personnel whether under contract, on leave, on a per diem basis, employed or to be employed by the Board, but excluding:

(Insert positions excluded from the negotiating unit.)

The definition of the bargaining unit is very important. The board has the same right as the union to insist upon the proper negotiation unit. The unit should be limited to classifications of employees which have what is called a "community of interest." In a teachers' unit, this would include all certificated teaching personnel under contract. The unit may also include nurses, psychologists, and social workers. The unit will differ from district to district.

A few districts have "mixed units" containing certificated personnel and some or all of the non-professional employees in the district.

Under Chapter 123, the superinten-

dent and assistant superintendent must be excluded from all bargaining units. Confidential employees also are excluded from bargaining units under Chapter 123. Should the board have any questions concerning the propriety or appropriateness of the bargaining unit as constituted, it may file with PERC a petition for clarification of unit. In addition, new supervisory bargaining units may not be represented by unions which admit nonsupervisors to membership (such as the NJEA). Nor can a unit formed after 1968 contain supervisors and non-supervisors. PERC had recently held that persons designated to evaluate teachers are supervisors under the PERC law and may not remain in the teachers' bargaining unit. **Cinnaminson**, D.R. No. 81-39. (For a full discussion of bargaining units see **PERC**, Chapter Two, "Representation.")

PERC's Director of Representation has ruled that substitute teachers who meet certain strict criteria have the right to negotiate under Chapter 123. **Bridgewater-Raritan Board of Education**, D.R. No. 79-12.

With the passage of time there may arise some difficulty when new titles are created in the district. There are several ways which can be used to resolve these unit problems. If you encounter difficulty, call your professional negotiator, board attorney or Field Service Representative for a full discussion of such matters as unit clarification, supervisory exclusion or unit consolidation.

B. Definition of Teacher
Unless otherwise indicated, the term "teachers," when used hereinafter in this Agreement, shall refer to all professional employees represented by the Association in the negotiating unit as above defined, and references to male teachers shall include female teachers.

Paragraph B means that every right granted a classroom teacher applies equally to all professionals who are not classroom teachers. The board may wish to reserve certain rights and privileges only to classroom teachers and/or to full-time employees, such as preparation periods or tuition reimbursement. Whether or not you have such a definition, be careful to specify when a contract clause does not apply to all employees.

Article II, *Negotiation of Successor Agreement*

A. Deadline Date
The parties agree to enter into collective negotiation over a successor Agreement in accordance with Chapter 123, Public Laws 1975 in a good-faith effort to reach agreement on all matters con-

Under the Rules and Regulations of PERC, there is now a beginning date for negotiations on successor agreements. This year it is about

cerning the terms and conditions of teachers' employment. Such negotiations shall begin not later than August 1 of the calendar year preceding the calendar year in which this Agreement expires. Any agreement so negotiated shall apply to all teachers, be reduced to writing, be signed by the Board and the Association, and be adopted by the Board.

December 7. If the parties agree to begin at a later date they may do so.

The Sample Agreement would begin bargaining on or before August 1st. In effect, boards would be bargaining over a successor to a contract **which has not even taken effect**. While timing of negotiations is within the power of the parties subject only to PERC's rules, this last point should be kept in mind. Generally it is better for boards to begin negotiations late in the Fall. If proposals are exchanged in December and actual negotiations are begun in January, so much the better. For an explanation as to why we advise this, see "When to Start Bargaining" in **Negotiations 1981**.

Regarding the last sentence: you should always notify the union prior to negotiations that the full board of education retains the right to ratify or reject any agreements reached during negotiations. Boards should not agree to a clause like this last sentence.

B. Grants from Federal or State Agencies
The Board agrees that the procedure set forth in this ARTICLE shall be applicable to the determination and implementation of the grants to be requested by the Board pursuant to any federal and/or state laws, provided, however, that the relevant time-table shall be shortened if necessary to comply with time requirements in making or processing applications under the relevant federal or state laws.

C. Increase in State Aid
The Board agrees to reopen negotiations and permit amendments to any section of this Agreement whenever state and/or federal funds in addition to and/or in excess of those amounts previously anticipated for the fiscal year(s) covered by this Agreement have been appropriated. The Board shall so inform the Association within five (5) days of its notification of the amounts to be received in such subsequent state and/or federal appropriation.

Boards should reject B. and C. These call for automatic reopening of a contract in certain circumstances. When the contract is reached, it is preferable that it resolve all issues for its entire term. No mention is made, it is noted, of reopening negotiations in the event of a **decrease** in State or Federal aid. No New Jersey boards have agreed to such a clause.

D. Modification
This Agreement shall not be modified in whole or in part by the parties except by an instrument in writing duly executed by both parties.

Section D. is a standard clause and should be retained in the agreement.

Article III, *Grievance Procedure*

The grievance procedure may be the most important section of any contract. Ideally, a grievance procedure will define a grievance, identify who may file a grievance, set a time limit on the filing of a grievance and detail individual steps through which a grievance must pass. Grievance procedures can provide a positive means for resolution of disputes.

For a thorough analysis of the legal and practical considerations that affect grievance procedures, see **Administering the Negotiated Agreement**, pp. 1-24. This book also contains a sample grievance procedure at Appendix D which modifies much of the NJEA Sample Agreement

A. Definitions

1. Grievance

A "grievance" is a claim by a teacher or the Association based upon the interpretation, application, or violation of this Agreement, policies or administrative decisions and practices affecting a teacher or a group of teachers.

language to make it more workable for school boards and administrators.

The definition of a grievance should be limited to the **mandatory definition of a grievance** established in the Supreme Court's **West Windsor** decision, 78 **N.J.** 98 (1978). In that case the Court stated that all grievance procedures must permit grievances over the interpretation, application or alleged violation of negotiated agreements, board policies and administrative decisions affecting employees' **terms and conditions of employment.** A later case **permits** employers to negotiate a grievance procedure over non-terms and conditions of employment, such as class size, as long as such a procedure **does not end in binding arbitration. Bernards Township,** 79 **N.J.** 311 (1979).

Therefore, if a board does not specifically limit its grievance procedure to terms and conditions of employment, it risks having PERC or an arbitrator misinterpret it to allow grievances over **virtually any topic at all,** as long as such grievances do not proceed to binding arbitration. This risk is especially high if your present grievance procedure ends in **advisory arbitration.** See **Watchung Hills Regional,** PERC No. 81-86.

To avoid this problem, delete the NJEA Model Agreement phrase, "a teacher or group of teachers" and substitute, "the terms and conditions of employment of a teacher or group of teachers."

Even with this definition of a grievance, a board should not agree to permit all such grievances to go to binding arbitration. (Binding arbitration, of course, is a negotiable topic, **not** a mandate. You may have binding arbitration for some, all or none of the grievances in your district that concern terms and conditions of employment.)

Boards which have agreed to an arbitration clause should only agree to submit grievances to binding arbitration which arise under the express terms of the agreement. Grievances over "board policies and administrative decisions and practices" should not fall under an arbitration clause.

Boards should avoid agreeing to a grievance definition that includes "practices" as grievable, because the word is too ambiguous: consistent

practices, known practices, building practices, grade practices, random practices or individual supervisor practices? If you exclude the words "and practices," grievances can be defined as listed in this **Sample Agreement** paragraph. However, only grievances over alleged violations or misinterpretation of the contract should proceed through all grievance steps including binding arbitration. Grievances concerning "policies" should start and end with the board. Grievances concerning "administrative decisions" might start with the administrator responsible for the decision and end with the board. Grievances over statutes and regulations should start with the superintendent and end at the board, subject to appeal to the appropriate administrative agency. See **Administering the Negotiated Agreement**, pp. 18-23.

These different initiation and terminal steps in this "multi-track" grievance procedure would meet your obligations under **West Windsor** and limit grievance review to the logical levels.

The Supreme Court strongly endorsed this multi-track approach in its decision.

2. Aggrieved person
An "aggrieved person" is the person or persons or the Association making the claim.

3. Party in interest
A "party in interest" is the person or persons making the claim and any person including the Association or the Board, who might be required to take action or against whom action might be taken in order to resolve the claim.

Who May File a Grievance: The Supreme Court decided on August 3, 1978, that the majority representative union has the constitutional and statutory right to present grievances on behalf of employees, and that this right cannot be waived through contrary contractual language. The case, involving the **Red Bank Regional Board of Education**, 78 **N.J.** 122, thus prohibits the negotiation of a clause to restrict the filing of grievances to individual employees. The Court decision assumed that individuals have a concurrent right to present grievances themselves; it did not address whether a union can file a grievance against the wishes of the affected employee.

B. Purpose
The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to the problems which may from time to time arise affecting teachers. Both parties agree that these proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.

The purpose of the grievance procedures is not to achieve "equitable" solutions, but to resolve differences concerning the **rights** of the parties regarding the terms and conditions of employment of the employees covered by the contract. The sample language

grants unlimited discretion to an arbitrator to fashion an "equitable" solution according to his or her personal definition of justice. This is too broad a grant of authority to an arbitrator.

C. Procedure

1. Time limits

The number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

Time Limit: The Sample Agreement places rigid time limits on the board's administrative personnel but places no time limit on the grievant. It is in the interest of the parties that a time limitation be placed in the contract. If you find that you do not have enough time at any step to adequately consider a grievance, propose different time limitations. The contracts in the private sector often place a 3 day limit on the initial filing of grievances. While this may seem unduly restrictive, two weeks would not seem so. This time limit should appear prior to or in the first step of the procedure.

The phrase "should be considered" is unnecessary and should be replaced by the word "is".

2. Year end grievances

In the event a grievance is filed at such time that it cannot be processed through all the steps in this grievance procedure by the end of the school year, and, if left unresolved until the beginning of the following school year, could result in irreparable harm to a party in interest the time limits set forth herein shall be reduced so that the grievance procedure may be exhausted prior to the end of the school year or as soon thereafter as is practicable.

3. Level one – principal or immediate superior

A teacher with a grievance shall first discuss it with his principal or immediate superior, either directly or through the Association's designated representative, with the objective of resolving the matter informally.

The Sample Agreement's procedure begins with the principal or immediate superior and goes on to the superintendent. Those boards which have department chairmen may wish to involve these supervisors in the grievance procedure.

The practice in nearly all districts in New Jersey is to provide that the board of education is a formal step in the grievance procedure, hearing grievances appealed beyond the Superintendent's level. Most boards feel it is their obligation to receive and act on employee grievances directly.

There is another school of thought, however, which states that a board should engage only in policy-**making** and that grievances are really only concerned about the **implementation** of the board's policies, which is an **administrative** function.

If your board believes that it spends too much time reviewing employee grievances, consider negotiating yourselves out of the process. Instruct your chief school administrator to consult with you on the more complex grievances, and to use his administrative judgment on the others. For some boards, removing themselves from grievance handl-

4. Level two – superintendent

If the aggrieved person is not satisfied with the disposition of his grievance at Level One, or if no decision has been rendered within five (5) school days after the presentation of the grievance, he may file the grievance in writing with the Association within five (5) school days after the decision at Level One or ten (10) school days after the grievance was presented, whichever is sooner. Within five (5) school days after receiving the written grievance, the Association shall refer it to the superintendent of schools.

5. Level three — arbitration

(a) If the aggrieved person is not satisfied with the disposition of his grievance at Level Two, or if no decision has been rendered within ten (10) school days after the grievance was delivered to the superintendent, he may, within five (5) school days after a decision by the superintendent or fifteen (15) school days after the grievance was delivered to the superintendent, whichever is sooner, request in writing that the Association submit its grievance to arbitration. If the Association determines that the grievance is meritorious, it may submit the grievance to arbitration within fifteen (15) school days after receipt of a request by the aggrieved person.

(b) Within ten (10) school days after such written notice of submission to arbitration, the Board and the Association shall attempt to agree upon a mutually acceptable arbitrator and shall obtain a commitment from said arbitrator to serve. If the parties are unable to agree upon an arbitrator or to obtain such a commitment within the specified period, a request for a list of arbitrators may be made to the American Arbitration Association by either party. The parties shall then be bound by the rules and procedures of the American Arbitration Association.

(c) The arbitrator's decision shall be in writing and shall be submitted to the Board and the Association and shall be final and binding on the parties.

ing may "de-politicize" district labor relations substantially, as well as free up board time for policy functions while buttressing the authority of the administration. It may be particularly appropriate for the board to delete itself from the grievance procedure if most grievances the board handles proceed to arbitration anyway.

The appropriate role for the board in your district's grievance procedure will depend on the number of grievances that arise, your relations with the administration and the union and the other demands on your time.

Boards differ on whether they desire to have themselves, advisory or binding arbitration as the last step of the grievance procedure. 40% of school boards have not agreed to binding arbitration. No board is required to agree to binding arbitration. Prior to doing so you should be sure that you can operate the school system adequately with the definition of a grievance and the contract clauses to which you have agreed. Binding arbitration can prove harmful especially where you have agreed to a "savings clause," or a "past practice clause." Remember, no matter how responsible you believe the union to be, expect the organization to seek the most favorable (in their eyes) interpretation of a given clause. Can you now live with that interpretation? The amount of no or yes answers you give to this question may help you determine whether you desire to agree to binding arbitration.

If the union is intent on gaining binding grievance arbitration, they should be willing to remove any "past practice" clause. In addition, the board should insist on a "no strike or work stoppage" clause.

If you have agreed to binding arbitration, it is now critical because of the **West Windsor** decision to limit such arbitration to the "express terms of the written Agreement." Whether or not you have done that earlier in your procedure, you should do it here also. See **Administering the Negotiated Agreement**, p. 22, for sample language. This is certainly one issue on which hard bargaining may be required to protect the very functions of public management of education and avoid unnecessary and frivolous grievances.

The following language should also be contained in any arbitration clause to limit the arbitrator to his or her proper role: *"The arbitrator shall be limited to the issues submitted and shall consider nothing else. The arbitrator can add nothing to nor subtract anything from the Agreement between the parties."*

You should be aware of the "self-help" rule. Most arbitrators will hold that an employee must carry out any directive (unless it threatens his or her health or safety) and cannot refuse to do so on the grounds that the directive violated the contract. Employees who violate this procedure (also commonly referred to as the "work, then grieve" rule) might ultimately win on whether the directive was in violation of the contract, but lose on the issue of the employer's discipline of the employee for insubordination.

(d) In the event that arbitrability of a grievance is at issue between the parties, jurisdiction to resolve the issue shall rest solely with the arbitrator selected in accordance with the provisions of Section C.5 (b) of this Article.

(e) The costs for the services of the arbitrator, including per diem expenses, if any, and actual and necessary travel, subsistence expenses and the cost of the hearing room shall be borne equally by the Board and the Association. Any other expenses incurred shall be paid by the party incurring same.

Boards should not agree to 5.d. This clause is designed to remove PERC and the courts from making decisions on what is negotiable and arbitrable, and is not in the best interest of the board. 5.e. is standard. See **Administering the Negotiated Agreement**, pp. 83-85 and pp. 131-133 for a detailed discussion of arbitrability.

D. Rights of Teachers to Representation

1. Teacher and association

Any aggrieved person may be represented at all stages of the grievance procedure by himself, or at his option by representative(s) selected or approved by the Association. When a teacher is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the grievance procedure.

D.1. This is standard language. The first sentence is a paraphrase of law regarding the right to Association representation. It implies, however, that an employee can demand to represent himself during arbitration, not likely the intent of the clause. The second sentence is general labor relations practice.

2. Reprisals

No reprisals of any kind shall be taken by the Board or by any member of the administration against any party in interest, any representative, any member of the Association, or any other participant in the grievance procedure by reason of such participation.

D.2. is a paraphrase of law. These protections are guaranteed by the law and need not be included in the contract.

E. Miscellaneous

1. Group grievance

If, in the judgment of the Association, a grievance affects a group or class of teachers, the Association may submit such grievance in writing to the superintendent directly and the processing of such grievance shall be commenced at Level Two. The Association may process such a grievance through all levels of the grievance procedure even though the aggrieved person does not wish to do so.

E.1. Note that the grievance would begin with the superintendent rather than the principal or immediate superior. The second sentence is merely **negotiable** beyond step one of the grievance procedure; it is not a statutory right. See **Red Bank**, above.

2. Written decisions

Decisions rendered at Level One which are unsatisfactory to the aggrieved person and all decisions rendered at Levels Two and Three of the grievance procedure shall be in

E.2. You retain the flexibility to agree on various approaches to your procedure. Some boards have highly

writing setting forth the decision and the reasons therefore and shall be transmitted promptly to all parties in interest and to the Association. Decisions rendered at Level Three shall be in accordance with the procedures set forth in Section C, paragraph 5 (c) of this ARTICLE.

3. Separate grievance file

All documents, communications and records dealing with the processing of a grievance shall be filed in a separate grievance file and shall not be kept in the personnel file of any of the participants.

4. Forms

Forms for filing grievances, serving notices, taking appeals, making reports and recommendations, and other necessary documents shall be prepared jointly by the superintendent and the Association and given appropriate distribution so as to facilitate operation of the grievance procedure.

5. Meetings and hearings

All meetings and hearings under this procedure shall not be conducted in public and shall include only such parties in interest and their designated or selected representatives, heretofore referred to in this ARTICLE.

Article IV, *Teacher Rights*

A. Rights and Protection in Representation

Pursuant to Chapter 123, Public Laws 1975, the Board hereby agrees that every employee of the Board shall have the right freely to organize, join and support the Association and its affiliates for the purpose of engaging in collective negotiations and other concerted activities for mutual aid and protection. As a duly selected body exercising governmental power under the laws of the State of New Jersey, the Board undertakes and agrees that it shall not directly or indirectly discourage or deprive or coerce any teacher in the enjoyment of any rights conferred by Chapter 123, Public Laws 1975 or other laws of New Jersey or the Constitutions of New Jersey and the United States; that it shall not discriminate against any teacher with respect to hours, wages, or any terms or conditions of employment by reason of his membership in the Association and its affiliates, his participation in any activities of the Association and its affiliates, collective negotiations with the Board, or his institution of any grievance, complaint or proceeding under this Agreement or otherwise with respect to any terms or conditions of employment.

formalized procedures, with written answers on prepared forms. Others find an informal approach more useful. Use what works for you.

The joint agreement on forms for filing grievances is a standard procedure. However, there need be no agreement to jointly construct forms for the balance of items listed in E.4. Of course, E.4.'s last few phrases might require a board to distribute grievance forms on a regular basis, a thoroughly ridiculous act.

A "Sample Grievance Form" is contained in **Administering the Negotiated Agreement** at p. 200.

E.5. is a standard clause. It cannot be used, however, to deny an employee any rights he has under the "Sunshine Law" to compel a public discussion of his grievance. See **New Milford Board of Education**, PERC No. 81-36.

This is an example of an unnecessary commitment to a paraphrase of law. The PERC law provides: "Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of reprisal, to form, join and assist any employee organization or to refrain from any such activity." Note that the Sample Agreement language does not protect employees who don't join the NJEA, although the PERC Law does.

School boards should also avoid the phrase beginning on the fourth line: "*and other concerted activities for mutual aid and protection.*" This is not defined, but is an addition to the PERC Law language, and could be used by the union to justify illegal job actions and strikes.

Boards should generally refrain from placing statutory provisions in labor agreements. If references must be made to law, they should be specific references, not paraphrases. Furthermore, boards should think twice before agreeing to allow arbitrators to make determinations on the meaning of statutes. An arbitration clause that is limited to the "terms of this agreement" would

probably permit an arbitrator to rule on alleged violations of statutes which are referenced in the agreement. **The arbitration clause can be as narrow as the parties make it.** You can exclude disputes over statutory terms and conditions of employment from arbitration.

B. Statutory Savings Clause

Nothing contained herein shall be construed to deny or restrict to any teacher such rights as he may have under New Jersey School Laws or other applicable laws and regulations. The rights granted to teachers hereunder shall be deemed to be in addition to those provided elsewhere.

The second sentence is a "past practice" clause. The goal of this sentence is to freeze all existing "benefits." If this sentence is present anywhere in your contract your administrative personnel may never be sure of whether a certain practice is a teacher "benefit." Boards should never agree to a contract clause the meaning of which is unclear. The union should be asked which "benefits" it seeks to guarantee by this sentence. That question may result in a withdrawal of the demand. On the other hand, their answer may make you think twice about agreeing to this sentence.

C. Just Cause Provision

No teacher shall be discharged, disciplined, reprimanded, reduced in rank or compensation, or deprived of any professional advantage, or given an adverse evaluation of his professional services without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth.

The difficulty with Section C is two-fold: parts of it are virtually impossible to define; other parts concern illegal topics for negotiations. For example, the decision to discharge a teacher for poor performance or in a reduction-in-force is non-negotiable and non-arbitrable. **Fairview**, PERC No. 80-18; **Maywood**, 168 **NJ Super** 45. The decision to withhold the increment cannot be grieved to binding arbitration. **Bernards Township**, 79 **N.J.** 311 (1979). "Professional advantages," if it refers to assignments or the availability of aides, is non-negotiable. Transfers, even if for disciplinary purposes, are not arbitrable. **Jefferson**, PERC No. 80-21. At the time this is being written, discipline has been declared non-negotiable and non-arbitrable by the Appellate Division courts. **State of New Jersey**, ___ **N.J. Super.** ___ (June 2, 1981). Adverse evaluations are not arbitrable. **Hazlet**, App. Div. March 27, 1980 (unpublished). Adverse evaluations are not arbitrable. **Hazlet**, App. Div. March 27, 1980 (unpublished).

It is uncertain what, if any, topics could legally be subject to a just cause standard before an arbitrator. Because of the complexity of the "just cause" standard, please seek guidance prior to even discussing this

issue in negotiations. It is usually better to agree to a number of specific and understandable clauses than to a single clause with as much uncertainty as this one.

D. Required Meetings or Hearings

Whenever any teacher is required to appear before any administrator or supervisor, Board or any committee, member, representative or agent thereof concerning any matter which could adversely affect the continuation of that teacher in his office, position or employment or the salary or any increments pertaining thereto, then he shall be given prior written notice of the reasons for such meeting or interview and shall be entitled to have representative(s) of the Association present to advise him and represent him during such meeting or interview. Any suspension of a teacher pending charges shall be with pay.

An employee has a statutory right to representation in an investigatory meeting which he reasonably believes could result in discipline. **North Warren Regional Board of Education,** PERC No. 79-9. Much of this clause is therefore unnecessary. But note that this right does not apply to evaluation conferences. Before agreeing to any clause such as this, boards should insist on knowing exactly what meetings the union has in mind.

The last sentence requires that suspensions be with pay. Suspension of teaching personnel should be without pay because of the difficulty in obtaining reimbursement of monies paid to employees who subsequently lose appeals before the Commissioner.

E. Evaluation of Students

The teacher shall maintain the exclusive right and responsibility to determine grades and other evaluations of students within the grading policies of the
School District based upon his professional judgment of available criteria pertinent to any given subject area or activity to which he is responsible. No grade or evaluation shall be changed without approval of the teacher.

The **Ridgefield Park** decision renders this an illegal subject. But even prior to that decision, it seemed clear that the clause was a violation of law. In a decision by the Acting Commissioner of Education in July, 1977, the following appeared:

It is essential that local boards must retain such authority of review to prevent assignment of unreasonable or arbitrary grades. The acts of teachers may neither be insulated from administrative review of their supervisors and administrators nor from quasi-judicial review by the Commissioner or judicial review by the courts. **Talarsky v. Edison Township Board of Education,** 1977 S.L.D. 862.

F. Criticism of Teachers

Any question or criticism by a supervisor, administrator, or board member of a teacher and his instructional methodology shall be made in confidence and not in the presence of students, parents, or other public gatherings.

G. Association Identification

No teacher shall be prevented from wearing pins or other identification of membership in the Association or its affiliates.

This section, if enforced in every case, probably would run counter to the Sunshine Law. Court decisions have determined that it is the individual employee who can select or reject public discussion of a personnel matter. The union cannot waive individual rights. If a teacher, for example, desires a discussion of his or her teaching performance to be held in public, the intent of this clause would have to be violated by the board as it complied with the Open Public Meetings Act.

Article V, *Association Rights and Privileges*

A. Information

The Board agrees to furnish to the Association in response to reasonable requests from time to time all available information concerning the educational program and the financial resources of the district, including but not limited to: class size, number of specialists, annual financial reports and audits, register of certificated personnel, tentative budgetary requirements and allocations, agendas and minutes of all Board meetings, census data, individual and group teacher health insurance premiums and experience figures, names and addresses of all teachers, and such other information that shall assist the Association in developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students, together with information which may be necessary for the Association to process any grievance or complaint.

A. goes well beyond the legal requirements to provide information. First, the union's right to certain information will rest on an interpretation of Chapter 123. Therefore, there is no need for this clause in the contract. Second, the sample language guarantees that the board will supply data that has little or no relevance to collective negotiations. Particularly disturbing is the reference to "tentative budgetary requirements and allocations," whatever that means.

Unions generally have a right to information possessed by the employer which is **reasonably** needed to carry out the union's duty to negotiate on behalf of its members or to fairly process grievances. If you are presented with a demand which you believe goes beyond these standards, consult your board attorney or professional negotiator.

The reference in the latter part of this clause to "developing intelligent, accurate, informed and constructive programs on behalf of the teachers and their students" is inappropriate in a labor contract and is probably an illegal topic of negotiations.

B. Released Time for Meetings

Whenever any representative of the Association or any teacher participates during working hours in negotiations, grievance proceedings, conferences, or meetings, he shall suffer no loss in pay.

The balance of Article V grants certain rights to the union. You are under no legal obligation to grant any of these rights.

B. could be agreed to if the "no loss of pay" provision covered employees **mutually scheduled** to participate in union activities.

C. Use of School Buildings

The Association and its representatives shall have the right to use school buildings at all reasonable hours for meetings. The principal of the building in question shall be notified in advance of the time and place of all such meetings. No approval shall be required.

C. in its "no approval" section could substantially interfere with the educational and/or extracurricular program in the district. It would be wiser to retain prior approval.

D. Use of School Equipment

The Association shall have the right to use school facilities and equipment, including typewriters, mimeographing machines, other duplicating equipment, calculating machines, and all types of audio-visual equipment at reasonable times, when such equipment is not otherwise in use. The Association shall pay for the reasonable cost of all materials and supplies incident to such use, and for any repairs necessitated as a result thereof.

D. requires no advanced approval. Is this acceptable to your administrators?

E. Bulletin Boards

The Association shall have, in each school building, the exclusive use of a bulletin board in each faculty lounge and teachers' dining room. The Association shall also be assigned adequate space on the bulletin board in the central office for Association notices. The location of the Association bulletin boards in each room shall be designated by the Association. Copies of all materials to be posted on such bulletin boards shall be given to the building principal, but no approval shall be required.

F. Mail Facilities and Mail Boxes
The Association shall have the right to use the inter-school mail facilities and school mail boxes as it deems necessary and without the approval of building principals or other members of the administration.

G. Office Space
The Association shall be provided without cost to it, with adequate office space in a building at a location and of a description to be mutually agreed upon. The Association shall be allowed to install a telephone in such office at its own expense.

H. Leave for Association President
The Board shall grant up to full leave with pay to the president of the Association during his term in office according to a schedule submitted by the president prior to the beginning of each school year.

G., H. Most districts will find it impossible to comply with these demands.

I. Released Time for Faculty Representative
The Board shall provide up to ( ) hours per week of released time to a faculty representative designated by the Association in each building to perform his functions as Association representative in the enforcement of this Agreement. Said time shall be in addition to regularly scheduled preparation time and lunch period as provided in this Agreement.

I. In larger districts, leave is granted in limited amounts. Your circumstance should dictate whether a similar clause is acceptable.

J. Orientation Programs
All orientation programs for new teachers shall be co-sponsored by the Board and the Association with the Association obligated to assume only such costs as may be mutually agreed upon during the planning of such programs. To the extent prohibited by law, the Board shall not be expected to assume the cost of purely social events conducted as part of such orientation programs, nor shall the Association be expected to assume the cost of speakers, consultants, and services normally considered an appropriate professional in-service training activity of a board of education. Duties and responsibilities of teachers involving student supervision outside of regular class work shall be clearly explained as part of the regular orientation program.

J. makes the union an equal partner with the board and administration in orientation programs. The advisability of this depends on your district's relationship with its teachers' union.

K. Sub Contracting
The Board shall enter into no contract which will result in instruction being provided, supervised, or otherwise influenced by any person or persons, organization, group or company other than properly certificated persons directly employed by the Board or by the Association without the express written approval of the Association.

Subcontracting has been declared an illegal topic for negotiations because it impermissibly interferes in the managerial decision as to who shall provide services to the public. **State of New Jersey**, 176 **N.J. Super.** 85 (App. Div. 1980). The case is currently on appeal to the Supreme Court. Regarding supervisors, on the other hand, the teachers' union has no authority to negotiate over who will supervise teachers; this part of the clause is clearly illegal.

L. Exclusive Rights
The rights and privileges of the Association and its representatives as set forth in this Agreement shall be granted only to the Association as the exclusive representative of the teachers, and to no other organizations.

Article VI, *Teacher Work Year*

A. In-School Work Year

1. Ten (10) month personnel
The in-school work year for teachers employed on a ten month basis (other than new personnel who may be required to attend an additional ( ) days of orientation) shall not exceed ( ) days. The first day of the in-school work day shall commence no earlier than September , 19 , and the last day shall be no later than June , 19 .

2. Twelve (12) month personnel
a. The in-school work year of teachers employed on a twelve (12) month basis shall not exceed ( ) days.

The second sentence of A.1. attempts to establish the beginning and ending dates of the academic calendar. C.1. attempts to establish through negotiations the vacation breaks within the academic calendar. The **Burlington County College** Supreme Court decision and recent PERC decisions hold that, while the actual number of days to be worked

b. Teachers on a twelve (12) month basis shall be entitled to ( ) vacation days, which shall occur between July 1 and August 31.

in a year is negotiable, the placement of those days is not.

Most boards have found that local unions have little desire to negotiate the calendar itself. Consultation with teachers is usually all that is needed, and is generally a good practice. But a clause requiring consultation **prior** to establishing or changing the calendar is not negotiable. **New Milford**, PERC No. 81-36.

3. Definition of in-school work year

The in-school work year shall include days when pupils are in attendance, orientation days, and any other days on which teacher attendance is required.

4. Inclement weather

Teacher attendance shall not be required whenever student attendance is not required due to inclement weather.

B. Holidays

Teachers shall be entitled to the following holidays: (* denotes legal holiday)

*Labor Day	*Washington's Birthday
Rosh Hashanah	*Good Friday
*Columbus Day	*Memorial Day
Yom Kippur	*Independence Day
*Election Day	*Christmas Day
*Veterans' Day	*New Years Day
*Martin Luther King Day	*Thanksgiving Day
*Lincoln's Birthday	

Teachers have a statutory right to leave with pay on legal holidays. Most districts do not close school on these days, however, in order to provide Christmas and spring vacation periods and an early June dismissal; the great majority of teachers cooperate by attending school on these days when so scheduled.

C. Vacation Periods

1. Teachers shall be entitled to the following vacation periods each year of the contract:

November_____ - November_____
December_____ - January_____
April_____ - April_____
Other_____ - _____

2. The work day prior to a vacation period shall be a half day (not to exceed four (4) hours).

D. Voluntary Work

The Board and/or the Administration may request voluntary work. However, any voluntary work performed on or during a holiday or vacation period shall be compensated at double the daily rate as determined by a 180-day work year. A teacher shall have the right to refuse to perform volunteer work during a holiday or vacation period.

This is a typical trade union proposal. Double time has never been agreed to by a school board for its professional staff.

Article VII, *Work Hours and Work Load*

A. Work Day

1. Teachers shall not be required to "clock in or clock out" by hours and minutes. Teachers shall indicate their presence for duty by placing a check mark in the appropriate column of the faculty "sign-in" roster.

A.1. Boards may desire more proof of presence than a check mark on a roster.

2. The arrival and departure times for all teachers shall be designated in Schedule C; however, their total in-school work day shall consist of not more than ( ) hours and ( ) minutes which shall include a duty-free lunch period as guaranteed to teachers under Section C of this ARTICLE.

A.2. While the length of the school day is a required subject of negotiations, you must be very careful to avoid limiting district operation. Districts which negotiate **total** hours of the work day, rather than the **actual times** employee attendance is required, have substantially more flexibility to meet changing conditions.

3. Except as clarified in paragraph 4 below, no teacher shall be required to report for duty earlier than ( ) minutes before the opening of the pupil's school day, and shall be permitted to leave ( ) minutes after the close of the pupil's school day, except as otherwise designated in Schedule C. On Fridays or on days preceding holidays, the teachers' day shall end at the close of the pupils' day.

A.3. In order to protect flexibility in assignment, it would be wise for a board to avoid specifying the actual arrival and dismissal time for teaching personnel.

4. Any teacher who is required to work beyond the regular teacher in-school work year as defined in ARTICLE VI, Section A.1, or beyond his/her total in-school work day as defined in paragraphs 2 and 3 above, shall be compensated at the rate prescribed in ARTICLE VI, Section F.

A.4. Should be refused on the grounds that, as professionals, teachers should perform reasonable amounts of work beyond the normal work day. Under the clause, an argument can be made that grading and preparation must be additionally compensated for.

Few boards have agreed to this clause. Most provide some additional compensation for specific duties.

B. Workload

1. Junior and Senior High School

a. The daily workload in the junior and senior high school shall be ( ) students per day which shall be equitably distributed through ( ) teaching periods per day and shall not exceed ( ) hours per day.

b. Junior and Senior High School teachers shall not be required to teach more than ( ) subject area(s), nor more than a total of ( ) teaching preparations.

c. Regular classroom teachers in the junior and senior high schools shall not be required to change subject area teaching stations more than ( ) time(s) during the school day.

d. Secondary teachers shall not be required to teach continuously for more than periods, nor ( ) where double periods are used.

B.1.a. and B.2.a. are, in part, class size clauses; class size is an illegal topic of bargaining since the **Ridgefield Park** decision. PERC has further held that the effect upon workload of an increase in class size is not negotiable because it is "inescapably intertwined and inseparable from" the decision to increase class size. **N.J.I.T.**, PERC No. 80-27. By contrast, PERC has generally held that the number of assigned teaching periods and duty periods per day involves "work hours" and is a required topic for negotiations. **Buena Reg.**, PERC No. 79-63.

2. Elementary School

a. The daily workload in the elementary school shall be ( ) students per day and shall not exceed ( ) hours per day.

b. Regular classroom teachers in the elementary school shall not be required to change teaching stations.

c. Elementary teachers shall not be required to teach continuously for more than ( ) hours.

d. Grade level workload shall be equalized.

B.1.b., c., d., and B.2.b, c., and d. are illegal topics for negotiations. Teacher assignments are a central aspect of a district's educational program. Such clauses are rare in teachers' agreements.

3. Specialists

The workoad of each specialist shall be equalized and shall be determined by the following number of students per specialist:

a. Elementary Level	Options-Per Day/ Per Period/Per Wk.
Art Teachers	_____
Vocal Music Teachers	_____
Foreign Language Teachers	_____
Physical Education Teachers	_____
Guidance Counsellors	_____
Reading Specialists	_____
Nurses	_____
Instructional Media Specialists (Librarians)	_____
Other	_____

B.3. is the equivalent of a class size clause and is probably illegal.

b. Secondary Level	Options Per Day/ Per Period/Per Wk.
Guidance Counsellors	_____
Reading Specialist	_____
Instructional Media Specialists (Librarians)	_____
Distributive Education	_____
Nurses	_____
Other	_____

c. Specialists shall not be required to teach continuously for more than ( ) hours.

4. Reduction of Workload Exceptions

Any class based on the maximum per teacher limits stated in paragraphs 1,2, and 3 above shall be reduced when the number of pupils assigned to any room is larger than:

a. The capacity of teaching facilities, number of adequate teaching stations and number of adequate pupil stations available in the room,

b. The appropriateness of the room to content of the course, the methods of instruction to be employed, and the prior preparation of teachers therefore,

c. The availability of equipment for adequate teacher demonstration and student use,

d. Any other conditions which affect the health, safety, and supervision of the pupils.

B.4. is a class size provision and is illegal.

5. Overload

a. Where overload is necessary, teachers shall receive additional salary which shall be calculated by dividing the teacher's salary by the maximum class and multiplying by the number of overload students.

b. Any overload in excess of five (5) students shall be double the normal overload formula as determined above.

c. The determination of the actual workload shall be made on the third day of pupil attendance. Any overload shall be calculated and added to a teacher's salary immediately. Any additional overload thereafter shall be added to salary as of the date of the overload.

B.5. It is likely that PERC will find a clause such as this, which does not prohibit increases in class size but provides premium pay for teaching in such a class, to be legal. Few boards have agreed to such clauses.

6. Lunch Periods

a. Grade Level and Other

Teachers shall have a daily duty-free lunch period of at least the following lengths:

1. Elementary School - _____
2. Junior High School - _____
3. Senior High School - _____
4. Other - _____

b. Leaving the Building

Teachers may leave the building without requesting permission during their scheduled duty-free lunch periods.

B.6.b. Some boards may desire to require notice of a teacher leaving.

7. Preparation Time

a. Grade Level

Classroom teachers shall, in addition to their lunch period, have daily preparation time during which they shall not be assigned to any other duties as follows:

1. Elementary School - _____
2. Junior High School - _____
3. Senior High School - _____
4. Other members of the negotiating unit who are not regular classroom teachers shall be provided with preparation time to the same extent as other teachers.

B.7.a. must be considered in light of the specific requirements and duties of each classification in the unit. Note that 7.a.4. would grant preparation time to nurses, librarians, and part-time employees covered by this contract. It may be unreasonable to provide these people with preparation time in light of their duties.

b. Extra Pay and/or Released Time

1. It is desirable for each teacher to have an uninterrupted preparation period each day. The practice of using a regular teacher as a substitute, thereby depriving him/her of his/her preparation period, is undesirable and shall be discouraged. In those cases where regular substitutes are not available, regular teachers who volunteer may be used as substitutes during their non-teaching time. In the absence of volunteers, a teacher may be assigned to serve as substitute. Volunteers and assigned teachers shall be paid at the rate of 1/1000 of their annual contract salary per class covered or the teacher may choose to credit these periods up to a total of ( ) periods which shall entitle him to ( ) additional personal business day(s) to be taken before the end of the current school year. Such coverage shall be arranged by the principal of the school in question and shall be distributed as equitably as possible among the teachers in said school.

The second sentence is an illegal topic for negotiations, because it concerns the hiring process. **Elizabeth**, PERC No. 80-10. The rest of the clause is legal. Very few boards have agreed to pay extra money to teachers who must teach combined classes because of a lack of substitutes.

2. In those cases where regular substitutes are not available and two classes are to be combined for the day or a major part thereof, the teacher in charge shall be paid 1/200 of his annual contract salary in addition to his regular salary; if the class is divided between two or more other teachers, each teacher teaching any part of the split class shall receive 1/400 of his/her annual salary in addition to his/her regular salary.

c. **Exceptions**

Exceptions to the provisions of Sections a and b above, may be made only in cases of extreme emergency. The Association shall be notified in each such instance, in advance, if possible.

B.7.c. It is likely that any arbitration award involving this clause that prohibited an employer from acting in an emergency according to the employer's definition of "emergency" would be illegal.

d. Extra-curricular Activities

1. Approved Activities

The board and the Association agree that the extra-curricular activities listed in Schedule E.

This clause should conclude "...are educationally worthwhile." It should be rejected as illegal, and because it opens the door for an arbitrator to forbid the termination of an extra-curricular activity.

2. Salary

Teacher participation in extra-curricular activities which extend beyond the regularly scheduled in-school day shall be voluntary, and shall be compensated according to the rate of pay and/or released time in Schedule E.

3. Staggered Schedule

In cases where released time is stipulated for extra-curricular assignments, such time shall be scheduled as a block at the beginning or end of the in-school day and attendance of the teacher at school shall not be required during said time.

The decision to assign particular teachers to extra-curricular positions, and the workload increase that necessarily accompanies that decision, is not negotiable. **Ramapo-Indian Hills**, PERC No. 80-9. While it is obviously preferable to have voluntary coverage of these activities, circumstances may not allow it for all activities.

e. Field Trips

Field trips shall be scheduled and implemented in a manner which shall be mutually agreed upon by teachers participating in them. Written permission for field trips shall be obtained from the superintendent to guarantee insurance coverage as a school-sponsored activity. For participation in field trips which extend beyond the teachers' in-school workday, and overnight or weekend trips, teachers shall be compensated at the rate set forth in Section A, paragraph 4 of this ARTICLE.

B.7.e. The first sentence concerns an illegal topic for negotiations. See the commentary above.

8. Meetings

a. Teachers may be required to remain after the end of the regular workday, without additional compensation, for the purpose of attending faculty or other professional meetings ( ) day(s) each month. Such meetings shall begin no later than ( ) minutes after the student dismissal time and shall run for no more than ( ) minutes. Except in cases of an emergency involving the health and safety of students and teachers, if additional time is needed, students shall be dismissed early.

b. Meetings which take place after the regular in-school workday and which require attendance shall not be called on Fridays or on any day immediately preceding any holiday, or other day upon which teacher attendance is not required at school.

B.8.a., b. and e. limit the district's ability to schedule after school meetings for faculty. Before agreeing to such a clause, the board must be sure that the administration finds it practical. The clause should be limited to faculty meetings so as not to limit the board's right to schedule parent-teacher meetings or to assign teachers to special assignments and programs presented by the students.

c. An association representative may speak to the teachers during any meeting referred to in paragraph 1 above for at least ( ) minutes on the request of the representative.

d. The notice of and agenda for any meeting shall be given to the teachers involved at least ( ) days prior to the meeting, except in an emergency. Teachers shall have the opportunity to suggest items for the agenda.

e. Teachers may be required to attend no more than ( ) evening assignments or meetings each school year without additional compensation.

B.8.c. It is legally questionable, and impractical, for the union to have a right to speak at all meetings which teachers are required to attend.

C. Department Heads

Department heads shall not be assigned more than ( ) student instruction-supervision periods each day, and shall be excused from regular study hall duties and homeroom assignments. A student instruction-supervision period means any period during which a teacher is responsible for directing the learning or supervising the behavior of students.

C. Department heads who are truly supervisors within the meaning of the PERC Law should not be included in the teachers' bargaining unit. See **PERC**, pp. 8-10.

D. Instructional Planning

Every teacher shall plan and teach course content in the manner he considers most practical and useful. Teachers who have received satisfactory evaluations shall not be required to submit standardized daily or weekly lesson plans which involve a mandated procedure or form. Teachers shall provide substitutes with daily, weekly, and/or alternate plans as needed, according to procedures developed by the principal and the Liaison Committee in each building as hereafter established under ARTICLE XXII of this Agreement.

D. The first and second sentences are illegal, and agreement to them would severely limit an administrator's ability to monitor the achievement of educational goals in a building and to evaluate the performance of staff. **Fairview**, PERC No. 81-19. The obligation to develop procedures for providing lessons for substitutes in consultation with the Liaison Committee is legal only as long as it doesn't interfere in the principal's access to the lesson plans or his ability to provide them to substitutes. (The Liaison Committee article is actually Article XVIII.)

E. A teaching period shall be defined as any pupil contact situation.

F. Any violations of the above procedures which cause inconvenience, additional workload or impact on working conditions shall be remedied immediately.

F. The ambiguity of this clause is enough to warrant its rejection. The reference to "additional workload" may be illegal as it relates to increases in class size.

Article VIII, *Nonteaching Duties*

A. Intent

The Board and Association acknowledge that a teacher's primary responsibility is to teach and that his energies should, to the extent possible, be utilized to this end. Therefore, they agree as follows:

Paragraph A. of Article VIII is a goal statement and should not be agreed to.

B. Application

1. List of nonteaching duties

Option (a)

Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties:

1. Nonprofessional assignments, including but not limited to milk distribution and supervision of cafeterias, sidewalks, bus loading or unloading or playgrounds.
2. Collecting money from students.
3. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
4. Correcting standardized tests used at the direction of the Board or the Administration.

Option (b)

1. Teachers may volunteer to perform the following nonteaching duties at the rate of $ per period.

a. Cafeteria duty
b. Supervision of playgrounds
c. Supervision of bus loading
d. Supervision of bus unloading
e. Milk distribution

Nonteaching Duties

2. Personnel other than teachers shall perform nonteaching duties and teachers shall not be required to perform the following duties.

a. Collecting money from students
b. Inventorying and storing books, delivering books to classrooms, duplicating instructional and other materials, keeping registers and cumulative record cards, and other clerical and/or custodial functions.
c. Correcting standardized tests used at the direction of the Board or the Administration.

PERC and the courts have been ambiguous on whether the decision to assign non-teaching duties to teachers is negotiable. If a clause is written in terms of workload, it will usually be considered binding; e.g., "...no more than five assigned periods per day." If it is written as a blanket prohibition on the assignment of teachers to non-teaching duties, it will be non-negotiable. It is lawful, on the other hand, to agree to extra pay for such duties. Very few boards have done so, however, because it is illogical to pay extra money to someone to do work which he is presently doing as part of the traditional responsibilities of the position.

The ambitious reader who wishes to compare a particular district's situation to the potpourri of cases on the topic is directed to **Negotiations News**, Nov./Dec. 1979; **Plainfield**, PERC No. 80-42; **Bayonne**, PERC No. 80-58, aff'd, App. Div., Nov. 3, 1980

(unpublished); **Dover**, PERC No. 81-110, and **Long Branch**, 74 **S.L.D.** 1189, aff'd, 73 **N.J.** 462 (1977).

2. Secretarial assistance

By the beginning of the 19 - school year, the Board shall hire one (1) secretary for every ( ) teachers to assist teachers in the preparation of materials, correspondence, ordering supplies and other duties related exclusively to teachers.

The decision to hire secretaries, or any other personnel, is not negotiable.

3. Noneducational activities

Activities which have no educational objective shall be barred from the classroom. There shall be no collection of funds from students for:

a. Activities in which all pupils are expected to participate which should be legitimately financed by the Board.
b. Other activities of such a desirable educational nature that they should be legitimately financed by the Board.
c. Activities and charitable purposes not appropriate or directly related to the age and interests of the pupils.
d. Activities and charitable purposes beyond the ability to pay of the least able pupil in the class.

The decision as to whether funds will be collected from students, and what those funds will be used for, is not a legal topic for negotiations. Some of the restrictions in this clause may be sound educational/administrative policy, and may already be the practice in your district; they are not, however, suitable topics for labor contracts. Few, if any, boards have agreed to such a clause.

4. Transporting students

a. Teachers shall not be required to drive students. A teacher may do so voluntarily, however, with the advance approval of his principal or immediate supervisor. He shall be compensated at the rate of (¢) cents per mile for the use of his own automobile.

b. By the beginning of the 19 - school year, the Board shall cover all damages, losses, and expenses incurred by a teacher arising out of the authorized use of his automobile in the performance of school duties.

Article IX. *Teacher Employment*

Article IX brings the union into the hiring process. This area is considered, for good reason, a basic management prerogative.

In **Ridgefield Park**, the Court relied heavily on C.212, the T & E law, which very specifically lists hiring as a policymaking function to be carried out with a "maximum of citizen participation." As such, agreements which limit boards in setting criteria for hiring (within the framework of existing law) are illegal.

A. Certification

1. Standard certificates

The Board agrees to hire only fully certificated teachers holding standard certificates issued by the New Jersey State Board of Examiners for every teaching assignment.

2. Notification

Upon employment the superintendent shall report to the Association in writing the certificates and degrees held, major and minor fields of study, and prior experience of each new teacher.

There is no valid reason why the superintendent should be required to "report" to the association the information demanded in paragraph A., clause 2 except as it is needed to ascertain whether the employee was placed on the proper salary level.

B. No Reduction

The Board agrees there shall be no reduction in the number of teachers from the previous year in positions defined in the unit represented by the Association as heretofore specified in ARTICLE I, Section A, of this Agreement for the duration of the Agreement.

(Notice to Association Leaders: If reduction in force is a threat in your district, the UniServ office will supply sample language for your contract.)

B. This is an illegal subject of negotiations.

C. Non-Certificated Personnel

The duties of non-certificated personnel shall be confined solely and exclusively to such duties as would assist certificated professional personnel in the performance of their respective duties. In no case shall any non-certificated employee be requested or required to perform any duty previously performed by a duly certificated professional employee.

C. The assignment of personnel, as long as it is carried out consistent with existing law, is major educational policy and, therefore, an illegal

subject. The second sentence appears to refer to using employees outside of the bargaining unit (see Chapter 2, "Representation," in PERC) to do work normally assigned to members of the unit. This is a required topic for negotiations according to PERC. **Rutgers**, PERC No. 79-72.

D. Placement on Salary Schedule

1. Adjustment to salary schedule

Each teacher shall be placed on his proper step of the salary schedule as of the beginning of the 19 - school year in accordance with paragraph 2 below. Any teacher employed prior to February 1 of any school year shall be given full credit for one (1) year of service toward the next increment step for the following year.

2. Credit for experience

Credit up to the ( ) step of any salary level on the Teacher Salary Schedule shall be given for previous outside teaching experience in a duly accredited school upon initial employment in accordance with the provisions of Schedule A. Additional credit not to exceed ( ) years for military experience or alternative civilian service required by the Selective Service System and credit not to exceed ( ) years for Peace Corps, VISTA or National Teacher Corps work and time spent on a Fulbright Scholarship shall be given upon initial employment. As of the beginning of the 19 - school year, the aforementioned credit shall be given to any presently employed teacher who has not heretofore received it.

Paragraphs D.2. and E.: **N.J.S.A.** 18A:29-9 prescribes that initial placement on the salary schedule "shall be at such point as may be agreed upon." PERC has ruled this to be a required topic. **Dennis Twp.**, PERC No. 80-157. It is recommended that boards retain the prerogative of such placement. Note, however, that **N.J.S.A.** 18A:29-11 requires a board to give credit on the salary guide for military service, with a maximum of four years credit. This has been interpreted to apply to longevity payments also, in certain limited circumstances. **Wall Township**, 149 **NJ Super** 126 (1977).

D.2. requires that the board grant credit for outside volunteer employment. This clause might result in the non-hiring of teaching personnel with this background because of the additional cost to districts.

E. Returning to the District

A teacher with previous teaching experience in the School District shall upon returning to the system receive full credit on the salary schedule for all outside teaching experience, military experience or alternative civilian service required by the Selective Service System, Peace Corps, VISTA or National Teacher Training Corps work and time spent on a Fulbright Scholarship up to the maximum set forth in Section B above. Such teachers who have not been engaged in other teaching or the other activities indicated above shall, upon returning to the system, be restored to the next position on the salary schedule above that at which they left.

F. Previous Sick Leave Accumulation

Previously accumulated unused leave days shall be restored to all returning teachers.

Paragraph F.: There is no statutory compulsion that boards grant such a provision.

G. Notification of Contract and Salary

Teachers shall be notified of their contract and salary status for the ensuing year no later than ----------.

Agreement as to dates involved in Article XI, paragraph G., should be made only after careful consultation with the superintendent.

Early notification dates have caused extreme difficulties in many districts.

Article X, *Salaries*

A. Salary Schedule

The salary of each teacher covered by this Agreement is set forth in Schedule "A" which is attached hereto and made a part hereof.

B. Procedure for Withholding Increment

Regular salary guide increments excluding adjustment may be withheld in whole or in part for inefficiency or other just cause related to the performance of duties and only in accordance with the following:

Paragraph B. of this article restricts the board's authority to withhold a teacher's salary increment. In **Bernards Township**, the Supreme

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1. Subject to ARTICLE IV, Section C.

2. That the procedures be adhered to as outlined in ARTICLE XVIII, "Teacher Evaluation".

3. The immediate superior and/or the principal shall not forward any recommendation to withhold a teacher's increment or a part thereof through the superintendent to the Board unless at least (90) ninety calendar days prior thereto, and in no case later than April 1 of the preceding school year in which such action would take effect, the principal has given to the teacher against whom the recommendations shall be made, written notice of the alleged cause(s) for the recommendations specifying the nature thereof with such particulars as to furnish the teacher an opportunity to correct and overcome the same.

4. Once a recommendation is forwarded to the teacher and the Board, the teacher may within ten (10) school days file a grievance commencing at the Superintendent level. No action shall be taken on the recommendation until the grievance is heard according to the grievance procedure as set forth heretofore in ARTICLE III of this Agreement.

5. Any action by the Board to withhold an increment or any part thereof shall be subject to appeal to arbitration as set forth in ARTICLE III of this Agreement. The arbitrator shall have the authority to restore all or part of the increment withheld retroactively.

6. Salary guide increment or part thereof withheld under this provision shall be restored the following year unless the procedures set forth in this provision are followed once again, in which case the increment or increments previously withheld and any additional increments which may be due may be withheld in whole or in part.

Court held such a restriction to be illegal (see "The Scope of Negotiations," earlier). The only aspects of withholding of an increment that may be negotiated are procedural matters that are consistent with N.J.S.A. 18A:29-14, such as notice to the teacher of the intent to withhold the increment, and the right to grieve the board's decision to **advisory arbitration.** (The article on teacher evaluation is actually ARTICLE XIV.)

C. Method of Payment

1. Twelve (12) month

Each member employed on a twelve (12) month basis shall have the option of being paid in twenty-four semi-monthly installments or in twelve (12) monthly installments.

2. Ten (10) month

Each teacher employed on a ten (10) month basis shall have the option of being paid in twenty (20) equal semi-monthly installments, or ten (10) equal monthly installments.

3. Summer pay plan

Each teacher may individually elect to have ten (10%) percent of his monthly salary deducted from his pay. These funds shall be paid to the teacher or his estate on the final pay day in June, according to a schedule of payment throughout the summer as requested by the teacher, or upon death or termination of employment, if earlier.

4. Exceptions

When a pay day falls on or during a school holiday, vacation or week-end, teachers shall receive their pay checks on the last previous working day.

5. Final pay

Each teacher shall receive his final pay and the pay schedule for the following year on his last working day in June.

Agreements with respect to methods of payment must meet your own administrative needs and be consistent with legal requirements.

Article XI, *Teacher Work Stations*

A. Procedure

1. All teachers shall be given written notice of their salary schedules, class and/or subject stations, building and room stations for the forthcoming year not later than . A list of said schedules and stations shall be simultaneously sent to the Association.

2. The superintendent shall notify all newly-appointed personnel of their specific positions within that subject area and/or grade level for which the Board has appointed them. The Superintendent shall give notice of work stations to new teachers as soon as practicable, and except in cases of emergency, not later than .

3. In the event that changes in such schedules, class and/or subject, building or room stations are proposed after , the Association and any teacher affected shall be notified promptly in writing and, upon the request of the teacher and the Association, the changes shall be promptly reviewed between the superintendent or his representative and the teacher affected and at his option a representative of the Association.

Notice provisions related to teacher assignment are required subjects for negotiations. Any aspect of this article, however, which infringes on the right of boards to make education related decisions regarding assignments is illegal. Most of this article was subject to PERC analysis in **Fairview Board of Education**, PERC No. 80-18.

Paragraph A.1., 2, and 3. concern required topics for negotiations, because they are strictly procedural in nature. The dates on which notice can reasonably be given is a judgment for your district's administrators making these assignments.

B. Teachers shall only be assigned to teach in areas for which they hold a standard teaching certificate issued by the New Jersey State Board of Examiners.

This is an illegal topic because it concerns the criteria for assignment.

C. 1. Schedules of teachers who travel to more than one school shall be arranged so that no such teacher shall be required to engage in an unreasonable amount of inter-school travel. Such teachers shall be notified of any changes in their schedules as soon as practicable.

2. Teachers who may be required to use their own automobiles in the performance of their duties and/or teachers who are assigned to more than one (1) school per day shall be reimbursed for all such travel at the rate of ( ) cents per mile for all driving done between arrival at the first location at the beginning of their workday, provided, however, that if the distance from the teacher's home to his first location or from the teacher's last location to his home is greater than the distance between the teacher's home and his base school, he shall be reimbursed for the difference at the rate of ( ) cents per mile.

C.1. The first sentence of this clause is illegal because it imposes a limitation upon the Board's ability to make up teacher schedules. The second sentence is procedural and negotiable.

D. Procedure for Change in Teacher Work Stations

1. The superintendent shall deliver to the association and post in all school buildings a list of the known vacancies as they occur.

2. Teachers who desire a change in grade and/or subject station or who desire to change to another building may file a written statement of such desire with the superintendent. Such statement shall include the grade and/or subject to which the teacher desires to be placed and the school or schools to which he/she desires to be placed, in order of preference. Such requests for change in the work station for the following year shall be submitted no later than

3. As soon as practicable, and no later than , the superintendent shall post in each school and deliver to the Association a system-wide schedule showing the names of all teachers whose work station has been changed, including the nature of the change.

D.1.,2.,3., and 6. are procedural and negotiable. If agreed to, be certain any dates included are administratively feasible.

4. In the determination of requests for a change in work station, the wishes of the individual teacher shall be honored to the extent that the change does not conflict with the instructional requirements and best interests of the school system. No such request shall be denied arbitrarily, capriciously, or without basis in fact. If a teacher's request for change has been denied, a renewed or subsequent request made in the following school year shall be granted under the conditions described above, unless there is no available position or an adequate replacement for the teacher cannot be obtained. If more than one teacher has applied for the same position, the determination as to which teacher shall receive it shall be made by lottery.

5. No vacancy shall be filled by means of involuntary change in work station if there is a qualified volunteer available to fill said position.

6. Notice of a voluntary change in work station will be given to teachers as soon as practicable, and except in cases of emergency not later than

D.4. and 5. are illegal because they concern the criteria for selection and assignment of personnel.

7. When an involuntary change in work station is necessary, a teacher's area of competence, major or minor field of study, length of service in the School District, length of service in the particular school building, and other relevant factors including, among other things, state and/or federal laws, rules, regulations or administrative directives, shall be considered in determining which teacher is to be selected for a change in work station.

D.7. also concerns criteria for assignment and is illegal.

8. An involuntary change in work station shall be made only after a meeting between the teacher involved and the [insert appropriate title], at which time the teacher shall be notified of the reason therefor. In the event that a teacher objects to the change at this meeting, upon the request of the teacher, the superintendent shall meet with him. The teacher may, at his option, have Association representative(s) present at such meeting.

D.8. According to PERC, the right to a meeting to discuss a transfer prior to the scheduled date of the transfer is a procedural matter and is negotiable. However, "the existence of such a procedure cannot prohibit effectuation of an assignment until after such a meeting takes place." Failure to comply with a prior meeting clause may not authorize rescission of an assignment. **East Orange**, PERC No. 81-25. In other words, the clause is negotiable, but apparently unenforceable. Such clauses don't help either party. A better approach would be to place such a clause into administrative regulation and to exclude it from arbitration.

9. A list of open positions in the school district shall be made available to all teachers being involuntarily changed. Such teachers may request the work stations in order of preference, to which they desire to be changed. All such teachers shall be given adequate time off for the purpose of visiting schools at which open positions exist. Teachers being involuntarily changed from their present positions shall have preference over those seeking voluntary change in regard to choice among those positions which are vacant. A teacher being involuntarily changed shall be placed only in an equivalent position — i.e., one which among other things does not involve reduction in rank or in total compensation.

D.9. The first two sentences in this paragraph are procedural and negotiable, and may be acceptable to most boards. The third sentence is likewise negotiable, but may cause too many administrative problems regarding the length and scheduling of such visits to be acceptable in your district.

The fourth sentence gives preference to involuntarily transferred teachers in filling vacancies. Such preference is illegal because it interferes in the assignment of personnel by management.

The last sentence is legal in some aspects, but at least potentially illegal in others. It is legal to the extent that it concerns matters that are themselves negotiable, e.g. protection against decreased compensation. It would be illegal if it were interpreted to concern non-negotiable matters; "equivalent position" cannot refer to class size, teaching assignment, or other such items.

10. Any teacher whose work station is changed shall be provided assistance in the following manner:

a. In cases of changes of work station during the work year, the teacher shall be provided one work week free of pupil contact in order to prepare for the new work station.

b. In cases of changes in work station determined during the summer vacation period, or changes scheduled during the work year effective for the next work year, the teacher shall have the option to work any one week during the summer vacation period. The teacher shall be compensated at the rate of pay appropriate to the new work year.

c. In the event a teacher takes courses related to the change in work station, the board shall pay the full cost of tuition and all related personal expenses.

D.10 has not been considered by PERC. It appears to be negotiable, relating only to paid leaves, extra compensation, and tuition reimbursement. 10a. and b., however, will be found by most boards to be unnecessary and therefore unacceptable.

Article XII, *Promotions*

A. Positions Included

Promotional positions are defined as follows:

Positions paying a salary differential and/or positions on the administrator-supervisory levels of responsibility including but not limited to positions as (list by title)

All vacancies in promotional positions, including specialists and/or special projects teachers, pupil personnel workers and positions in programs funded by the federal government shall be adequately publicized by the superintendent in accordance with the following procedure:

1. Date of posting

When school is in session, a notice shall be posted in each school as far in advance as practicable, ordinarily at least thirty (30) school days before the final date when applications must be submitted and in no event less than fifteen (15) school days before such date. A copy of said notice shall be given to the Association at the time of posting. Teachers who desire to apply for such vacancies shall submit their applications in writing to the superintendent within the time limit specified in the notice, and the superintendent shall acknowledge promptly in writing the receipt of all such applications. Applications shall be kept on file in the superintendent's office for continual consideration for future vacancies until the office is notified in writing by an applicant that the application is withdrawn.

2. Application procedure

Teachers who desire to apply for a promotional position which may be filled during the summer period when school is not regularly in session shall submit their names to the superintendent, together with the position(s) for which they desire to apply, and an address where they can be reached during the summer. The superintendent shall notify such teachers of any vacancy in a position for which they desire to apply. Such notice shall be sent as far in advance as practicable, ordinarily at least twenty-one (21) days before the

If the board agrees to a notification procedure for promotions, the time limits agreed upon must be feasible.

The proposed definition of promotion should include reference not only to increased salary or salary differential, but should also make clear that extra work and/or extra pay assignments should not constitute promotions.

There appears to be no good reason to require the superintendent to acknowledge a request for a promotion; if, however, such acknowledgement must be made, it should be nothing more than a simple form reply.

The superintendent should not be required to maintain a continuous file nor be required to constantly review old applications until such applications are withdrawn. A new applica-

final date when applications must be submitted and in no event less than fourteen (14) days before such date. In addition, the superintendent shall, within the same time period, post a list of promotional positions to be filled during the summer period at the administration office, in each school, and a copy of said notice shall be given to the Association.

tion should be required for each vacancy.

It should be stated definitely and clearly that it is the function of the superintendent to determine the qualifications required for any promotion.

B. Criteria for Notice

In both situations set forth in Section A above, the qualifications for the position, its duties, and the rate of compensation, shall be clearly set forth. The qualifications set forth for a particular position shall not be changed when such future vacancies occur unless the Association has been notified in advance of such changes and the reasons therefor. A disagreement over the necessity for such changes shall be subject to the grievance procedures set forth in this Agreement. No vacancy in a promotional position shall be filled other than in accordance with the above procedure.

B. The third sentence is an illegal subject for negotiations, because it would interfere in the board's right to determine the qualifications for promotion. **Newark**, PERC No. 80-2.

C. Two Optional Plans (Select One)

Option (a)

All qualified teachers shall be given adequate opportunity to make application and no position shall be filled until all properly submitted applications have been considered. The Board agrees to give due consideration to the professional background and attainments of all applicants, and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor. Each teacher applicant not selected shall, upon request, receive a written explanation from the superintendent. Appointments shall be posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration and in each school building. The list shall be given to the Association and shall indicate which positions have been filled and by whom.

C. In Option (a) the first sentence and sentences four through seven are procedural issues normally held by PERC to be required topics.

The second and third sentences go to the criteria for promotion and are thus illegal topics.

Option (b)

1. All qualified teachers shall be given adequate opportunity to make application for such positions and no positions shall be filled until all properly submitted applications have been considered. The Board agrees to give due weight to the professional background and attainments of all applicants and other relevant factors. In filling such vacancies, preference shall be given to qualified teachers already employed by the Board and when all other factors are substantially equal, length of time in the School District shall be the deciding factor.

2. All promotional positions shall be filled according to the following procedures:

   a. Each applicant who meets the qualifications for a vacancy shall be interviewed by a committee of ( ) persons, ( ) appointed by the superintendent and ( ) appointed by the president of the Association, and a record of the interview shall be filed with the application. Interview ratings for each applicant shall be prepared independently by each member of the committee.

   b. The committee shall then combine the independent interview ratings, together with the applicant's formal training, professional experience and experience in the School District into a total rating.

   c. All applicants shall be placed on a ranked list according to their total ratings.

   d. Selection for a vacancy shall be made from among the three (3) top ranking applicants by the superintendent with the approval of the interviewing committee.

3. Appointments shall be made not later than sixty (60) days after the notice is posted in the schools or the giving of notification to the interested teachers. Announcements of appointments shall be made by posting a list in the office of the central administration and in each school building, and a list shall be given to the Association indicating which positions have been filled and by whom.

In Option (b), only the first sentence of the first paragraph and the last sentence of the last paragraph are procedural and negotiable. The rest of this article deals with the criteria for promotion and seriously restricts a board's discretion in this area.

For a detailed analysis by PERC on a similar clause, see **Newark**, PERC No. 80-2.

Article XIII, *Accredited Evening High School - Summer School - Home Teaching and Federal Programs*

A. Posting

All openings for positions in the accredited evening high school, summer school, home teaching, federal projects, and other programs (including non-teaching positions for which teachers may be qualified and eligible) shall be publicized by the superintendent in accordance with the procedure for publicizing promotional vacancies set forth in ARTICLE XVI, Sections A and B of this Agreement. Summer school and accredited

The first question concerning this article is: are evening high school and summer school program personnel included in your bargaining unit? If they are not, there should be no negotiations over the terms and conditions of employment for those positions.

evening high school openings shall be publicized not later than the preceding March 1 and June 1 respectively and teachers shall be notified of the action taken not later than May 1 and September 1, respectively. Home teaching openings shall be posted as they occur.

Even if certain positions are not included in the bargaining unit, requirements for notification of position openings is a required subject (no concessions must be made in this area). The dates contained in A. may be too early in some districts.

B. Criteria
In filling such positions, consideration shall be given to a teacher's area of competence, major and/or minor field of study, quality of teaching performance, attendance record, and length of service in the School District. When all other factors are substantially equal, preference shall be given first to teachers who have taught the subject area and/or grade level in question during the regular school year and then to teachers who have taught the grade and/or subject in question on a regular basis at any time during the preceding ( ) years. Teachers employed in the School District shall have priority to such assignments before appointment to applicants from outside the district.

B. The criteria for selection of employees is not negotiable.

C. Salary
Salary schedules for positions included in this ARTICLE shall be negotiated under procedures outlined in ARTICLE II of this Agreement along with regular salary schedules wherever possible, or at such other times as may be appropriate in order to conform to the time requirements for the implementation of said programs.

D. Coverage by Master Agreement
All of the provisions of this Agreement shall apply to teachers holding positions in the accredited evening high school, summer school, home teaching and/or under federal programs, except where clearly inapplicable.

Again, C. and D. relate to terms and conditions of employment, but should not be a subject of negotiations unless these positions are included in the bargaining unit.

Article XIV, *Teacher Evaluation*

Two major decisions by PERC provide considerable guidance on the legality of the Sample Agreement language. These cases should be carefully reviewed before negotiating on this topic. **Bethlehem Board of Education**, PERC No. 80-5, and **Fairview Board of Education**, PERC No. 80-18.

Because of the State Board's rules on tenured teacher evaluation, there is a different range of negotiable items for tenured teachers as compared to non-tenured teachers. In either case, all educational policy matters, such as the criteria for evaluation and the selection of the evaluator, are non-negotiable. For tenured teachers there are substantial limits on the kinds of evaluation procedures that can be negotiated, because districts must conform to the extensive State Board regulations. The legal requirements for the evaluation of non-tenured teachers are less comprehensive, so there is more room for negotiations in this area.

Equally important to knowing the law on this topic is to know what is practical and effective in teacher evaluation. The opinions of your administrative staff are invaluable here.

A. Evaluation Committee

1. Membership

No later than September 15, 19 , the Board and the Association agree to establish an Evaluation Committee consisting of ( ) members, and ( ) members appointed by the Board, and ( ) members appointed by the Association.

2. Responsibility

This Committee shall develop specific criteria for the evaluation of teachers.

3. Report Date

The recommendations shall be submitted for adoption to the Board and the Association no later than December 15, 19 .

Because the criteria for evaluation is an illegal subject, the creation of an employee committee that has anything more than advisory authority is non-negotiable. The committee should not be able to obstruct the board's ability to adopt or change evaluation criteria. While the board should encourage wide professional involvement in evaluation criteria development, that involvement may not exclude the public or individual teachers from having input.

B. Procedure

1. Frequency

a. Teachers shall be observed through classroom visitation by a certified supervisor at least ( ) times in each school year, to be followed in each instance by a written evaluation report and by a conference between the teacher and his immediate supervisor for the purpose of identifying any deficiencies, extending assistance for their correction and improving instruction. Each observation shall consist of at least a full period in the junior/senior high school or a complete lesson in the elementary school(s).

B.1.a. is procedural and negotiable. The minimum duration of an observation for a non-tenured teacher is set out in N.J.A.C. 6:3-1.19.

b. Teachers shall be informed of classroom visitation at least five (5) work days in advance of said visitation.

PERC has held advanced notice of evaluations to directly affect the substantive aspects of the evaluation process and therefore to be illegal topics for negotiations.

c. Classroom visitations/observation shall not occur on the same day, nor shall any observation occur prior to the previous evaluation conference. In no case should any observation occur within ten (10) school days of the previous evaluation. All visitations/observations shall occur in the same work year.

B.1.c. This is procedural and negotiable.

2. Non-tenured Review

Violations of or disagreements over any of the provisions of this ARTICLE in cases involving nonrenewal of contract or termination of employment of nontenure teachers shall be subject to review under the Fair Dismissal Procedure established in ARTICLE XIX of this Agreement and shall be considered grounds for reinstatement without loss of pay or any other benefit provided by this Agreement.

B.2. PERC has ruled, in keeping with various court decisions, that the decision to renew or not renew a non-tenured teacher is a non-negotiable management right. Hence this clause is illegal. (The Fair Dismissal Procedure is actually found at ARTICLE XV of the Sample Agreement.)

3. Open Evaluation

All monitoring or observation of the work performance of a teacher shall be conducted openly and with full knowledge of the teacher. The use of eavesdropping, public address, cameras, audio systems, and similar surveillance devices shall be strictly prohibited.

B.3. is negotiable.

4. Evaluation by Certificated Supervisors

a. Teachers shall be evaluated only by persons certificated by the New Jersey State Board of Examiners to supervise instruction. By September 1 of each school year, each teacher shall be given the name of the person who will evaluate his/her classroom performance.

b. Evaluators shall be regular full-time employees of the school district and shall be certified in the instructional areas they are evaluating.

B.4.a. The first sentence limits the board in selecting its evaluators, and is illegal. The second sentence, providing that teachers be notified of their evaluator's name, is procedural and negotiable. B.4.b. is illegal because it restricts the board's right to hire and assign employees.

5. Copies of Evaluations

A teacher shall be given a copy of any class visit evaluation report prepared by his/her evaluator at least one (1) day before any conference to discuss it. No such report shall be submitted to the central office, placed in the teacher's file or otherwise acted upon without prior conference with the teacher. No teacher shall be required to sign a blank or incomplete evaluation form.

B.5. The first and third sentences are legally negotiable. The second sentence is negotiable for non-tenured teachers, and mandated for tenured teachers under the State Board regulations.

6. Conferences

Evaluation conferences as described in Section B.1 shall occur within fifteen (15) days of the observation. The conference shall be held within the school day without loss of benefit to the teacher.

B.6. is negotiable.

7. Right to Representation

A teacher shall have the right to representation in an evaluation conference.

B.7. is negotiable. Note that there is no right to such representation without a negotiated agreement so stating. A school board must consider the overall effect on the evaluation process of having a union representative present during an evaluation conference. Most administrators would find the presence of a union representative at an evaluation conference to be unnecessary and counterproductive.

8. Standardized Tests

Results of standardized tests used for evaluating students shall not be used to evaluate teacher performance.

B.8. is illegal as interference in the selection of evaluation criteria, and as contrary to the State Board regulations.

9. Communication

Prior to any evaluation report the immediate supervisor of a teacher shall have had appropriate communication, including but not limited to all steps in paragraph 10 below and the provisions of ARTICLE XXVIII, Section B of this Agreement with said teacher regarding his performance as a teacher.

B.9. is negotiable insofar as paragraph 10 is legal. The reference in the last two lines should be to ARTICLE XXV Section B. of the Sample Agreement, concerning an employee's right to counseling by his immediate superior.

10. Reports

Evaluation reports shall be presented to each teacher in accordance with the following procedures:

a. Such reports shall be issued in the name of the evaluator. The evaluator is the person who observed the teaching performance as required in Section B. of this ARTICLE.

b. Such reports shall be addressed to the teacher.

B.10. concerns the content of the evaluation report and is for the most part preempted by the State Board rules as they apply to tenured teachers. Only B.10.b., mandating that reports be addressed to the teacher, is a negotiable addition to tenured teacher evaluation procedures.

c. Such reports shall be written in narrative form and shall include, when pertinent:

(1) Strengths of the teacher as evidenced during the period since the previous report.

(2) Areas of improvement needed by the teacher as evidenced during the period since the previous report. If these areas of improvement are not repeated in subsequent reports said areas shall be considered remedied.

(3) Specific suggestions as to measures which the teacher might take to improve his performance in each of the areas wherein weaknesses have been indicated.

(4) Upon request the evaluator shall demonstrate the proper method(s) to correct any areas of improvement.

B.10.c. outlines the specific contents of the evaluation report. PERC has specifically ruled that B.10.c.(4) is not negotiable because it "relates to the evaluation." Following this logic it appears that all of B.10.c. is non-negotiable for non-tenured employees because it involves the substantive content of the report rather than the procedures involved, and therefore limits managerial prerogatives.

11. Final Evaluation

The annual summary evaluation of a teacher shall be determined by a compilation of the required evaluations as provided in this ARTICLE.

B.11, according to PERC, is not negotiable because it concerns the content of the report.

C. Personnel Records

1. File

A teacher shall have the right, upon request, to review the contents of his personnel file and to receive copies at Board expense of any documents contained therein. A teacher shall be entitled to have representative(s) of the Association accompany him/her during such review. At least once every ( ) years, a teacher shall have the right to indicate those documents and/or other materials in his file which he/she believes to be obsolete or otherwise inappropriate to retain. Said documents shall be reviewed by the Superintendent or his designee and if, in fact, they are obsolete or otherwise inappropriate to retain, they shall be destroyed. Disputes over the retention of said documents may be processed through the grievance procedure, commencing at Level Two.

Paragraph C., clause 1: To make disputes over whether or not materials included in the personnel file shall be expunged subject to the grievance process seems unwise. Since teachers generally have the ability to rebut materials contained in the file there seems little reason to become involved in controversy concerning expungement.

2. Derogatory Material

No material derogatory to a teacher's conduct, service, character or personality or any material which could have an adverse effect on a teacher's status shall be placed in his/her personnel file unless the teacher has had an opportunity to review the material. The teacher shall acknowledge that he/she has had the opportunity to review such material by affixing his signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the right to submit a written answer to such material and his answer shall be reviewed by the Superintendent or his designee and attached to the file copy.

No Separate File

Although the Board agrees to protect the confidentiality of personal references, academic credentials and other similar documents, it shall not establish any separate personnel file which is not available for the teacher's inspection.

D. Termination of Employment

Final evaluation of a teacher upon termination of his/her employment shall be concluded prior to any recommendation for severance and no documents and/or other material shall be placed in his/her personnel file of such teacher after severance or otherwise than in accordance with the procedure set forth in this ARTICLE.

Paragraph D. was ruled non-negotiable by PERC because it limited what could be placed in a teacher's personnel file.

Article XV, *Fair Dismissal Procedure*

In 1975, the Legislature enacted a statute and the State Board of Education enacted rules more specifically enforcing the rights of non-tenured teachers set forth in the **Donaldson** case.

These rules do not alter the basic relationship between a board and its non-tenured teachers. The nature of a non-tenured teacher's contract of employment with a school board is one for personal services with a commencement and a termination date. When the terminal date has been

reached, the contract is discharged and there are no longer any rights, duties, or obligations chargeable to either party to the previous agreement. In short, no relationship binding in law exists between the parties, and so it has been held in several instances by the Courts of the State of New Jersey.

A. Fair Dismissal Committee

1. Membership

No later than September 15, 19 , the Board and the Association agree to establish a Fair Dismissal Committee consisting of ( ) members, ( ) members appointed by the Board and ( ) members appointed by the Association.

A. A committee that is merely advisory to the board on this topic, and which neither binds the board nor obstructs its right to act in this area, is legally negotiable. **Commercial Township**, PERC No. 80-20. This is, however, the responsibility of the administration and the board; such committees are rarely created through the negotiations process.

2. Responsibility

This Committee shall develop specific criteria which shall be used for nonrenewal of contract or termination of employment for nontenure teachers.

3. Report date

The recommended criteria shall be submitted for adoption to the Board and the Association no later than December 15, 19 , and shall become an addendum to this Agreement.

4. Distribution to nontenure teachers

The Board shall provide said criteria to all presently employed nontenure teachers, as soon as possible after adoption.

A.4. is a term and condition of employment.

B. Notification of Status

1. Date

On or before April 30 of each year, the Board shall give to each nontenure teacher continuously employed since the preceding September 30 either:

a. A written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary and benefits as may be required by law or agreement between the Board and the Association, or

b. A written notice that such employment shall not be offered.

B.1. is a restatement of law and is unnecessary.

2. Reasons

Any nontenure teacher who receives a notice of nonemployment may within five (5) days thereafter, in writing, request a statement of reasons for such nonemployment from the superintendent, which statement shall be given to the teacher in writing within five (5) days after receipt of such request.

B.2. is a paraphrase of law and changes the board's legal obligations. 18A:27-3.2 requires that the board supply a written statement of reasons within **thirty** days, not the five listed in this sample clause. For some reason, this clause attempts to decrease teachers' statutory rights to request reasons from the present **fifteen** days to five. PERC has held that such time limit modifications are negotiable. **East Brunswick**, PERC No. 81-123.

3. Hearing

Any nontenure teacher who has received such notice of nonemployment and statement of reasons shall be entitled to a hearing before the Board, provided a written request for hearing is received in the office of the secretary of the Board within five (5) days after receipt by the teacher of the statement of reasons.

B.3. The Administrative Code very specifically requires an **informal appearance**, not a hearing. It is not to be an adversary proceeding; it should be of reasonable length; the teacher may be represented by one person or counsel; witnesses may be presented with no cross-examination; appearances shall be in private.

4. Board determination
The Board shall issue its written determination as to the employment or nonemployment of said nontenure teacher for the next succeeding school year within five (5) days after the completion of the hearing. Said proceedings shall be completed and the Board's determination presented to the teacher no later than May 31.

B.4. The Administrative Code supporting the non-tenure evaluation law requires that the board's written determination be issued within **three** days of the informal appearance, not the five days listed in this clause.

Additionally, there is no requirement that a written decision issue prior to May 31st. Assume that notice not to reemploy was given on April 30th. The statement of reasons is requested on May 15th. The reasons are given on June 14th. On June 24th (the ten day period set forth in Administrative Code), the affected teacher seeks an appearance which is held on July 24th, with a written determination issued on July 27th. Of course, most boards will proceed more quickly than this but if both parties exhausted each time limit, there would be no way to finish the process before late July.

5. Appeal to grievance procedure
If the teacher disagrees with the determination of the Board, he may submit the dispute through the grievance procedure as set forth in ARTICLE III of this Agreement, and said grievance shall commence at Level 3. In the event said grievance is submitted to arbitration, the arbitrator may restore the teacher to continued employment and may restore any loss of pay and/or benefits retroactively to which the teacher would be entitled under the terms and conditions of employment required by law or this Agreement between the Board and the Association.

B.5. As stated above, PERC has held that arbitrators have no authority to review a board's decision not to renew a non-tenured teacher. Arbitrators can hear grievances over procedural violations under this article, but, even if a procedural violation is found, the arbitrator is without any power to order reinstatement. **Fair-Lawn**, App. Div., June 2, 1980, and **Fairview**, PERC No. 80-18.

C. Failure to Comply
Should the Board fail to give a nontenure teacher either an offer of contract for employment for the next succeeding year or a notice that such employment shall not be offered and upon request by the teacher to the superintendent, a statement of reasons and a hearing, and in the event of such hearing shall fail to make and serve a copy of the determination, all within the time and in the manner provided by this ARTICLE, the Board shall be deemed to have offered to that teacher continued employment for the next succeeding school year upon the terms and conditions of employment as may be required by law or agreement between the Board and the Association.

D. Notification of Intention to Return
If the teacher desires to accept such employment, he shall notify the Board of such acceptance, in writing, on or before June 1, in which event such employment shall continue as provided for herein. In default of such notice the Board shall not be required to continue the employment of the teacher.

C.,D., and E. are restatements of the law. **N.J.S.A.** 18A:27-11 and 27-12.

E. Termination of Employment
Any nontenure teacher who receives a notice that his employment shall be terminated shall be entitled to a statement of reasons and a hearing as provided for in paragraphs 2, 3, 4, and 5 of this Section except that a determination of the Board shall be made and served thirty (30) days before the expiration of the notice period provided for in said contract. Should the Board fail to comply therewith, then said notice of termination shall be invalid and of no force and effect and the employment of the teacher shall continue as if such notice had not been given.

E. The rights of non-tenured teachers to a statement of reasons and an informal appearance before the board are negotiable as long as they comply with the legal minimums. See **Sachs**, 76 S.L.D. 170.

Article XVI, *Complaint Procedure*

A. Procedural Requirement
Any complaints regarding a teacher made to any member of the administration by any parent, student, or other person which does or may influence evaluation of a teacher shall be processed according to the procedure outlined below.

The essence of this article deals with a complaint lodged against a teacher, generally from an outside non-administrative source for which

B. Meeting with Principal or Immediate Superior

The principal or immediate superior shall meet with the teacher to apprise the teacher of the full nature of the complaint and they shall attempt to resolve the matter informally.

C. Right to Representation

The teacher shall have the right to be represented by the Association at any meetings or conferences regarding such complaint.

D. Procedure

Step 1.

In the event a complaint is unresolved to the satisfaction of all parties, the teacher may request a conference with the complainant to attempt to resolve the complaint. If the complaint is unresolved as a result of such conference or if no mutually acceptable conference can be agreed on, the complaint shall move to Step 2.

Step 2.

Any complaint unresolved under Step One at the request of the teacher or the complainant shall be reviewed by the building principal or counterpart supervisor in an attempt to resolve the matter to the satisfaction of all parties concerned.

Step 3.

Any complaint unresolved at Step Two may be submitted in writing by the complainant or the teacher to the building principal or counterpart supervisor who shall forthwith forward a copy to the superintendent or his designee and the complainant.

Step 4.

Upon receipt of the written complaint the superintendent or his designee shall confer with all parties. The teacher shall have the right to be present at all meetings of the superintendent or his designee and the complainant.

Step 5.

If the superintendent or his designee is unable to resolve a complaint to the satisfaction of all parties concerned, at the request of the complainant or the teacher he shall forward the results of his investigation along with his recommendation, in writing, to the Board and a copy to all parties concerned.

Step 6.

After receipt of the findings and recommendations of the superintendent or his designee, and before action thereon, the Board shall afford the parties the opportunity to meet with the Board and show cause why the recommendations of the superintendent or his designee should not be followed. Copies of the action taken by the Board shall be forwarded to all parties.

Step 7.

Any complaint unresolved under Step 6, may be submitted by the teacher to the grievance procedure as set forth in ARTICLE III of this Agreement and shall commence at Level 3.

the teacher grieves for relief and remedy against a potentially damaging influence which the complaint may have against the teacher's evaluation report.

Very few boards have such a complaint procedure in their agreement.

It would appear that Paragraph A., B. and C. of this article should alone suffice to ensure fair and equitable treatment to any complaint so lodged against a teacher.

Article XVII, *Teacher Facilities*

A. Listing of Facilities

By the beginning of the 19 - school year, each school shall have the following facilities:

1. All rooms which are used for purposes of instruction during any portion of the months of May, June, July, August, September, and October shall be air conditioned;
2. Space for each teacher within each instructional area in which he teaches to store his instructional materials and supplies;
3. An air-conditioned teacher work area containing adequate equipment and supplies to aid in the preparation of instructional materials;
4. An appropriately furnished and air-conditioned room which shall be reserved for the exclusive use of teachers as a faculty lounge. Although teachers shall be expected to exercise reasonable care in maintaining the appearance and cleanliness of said lounge, it shall be regularly cleaned by the school's custodial staff.
5. A private pay telephone in each faculty lounge for the exclusive use of teachers;
6. A serviceable desk, chair, and filing cabinet for the exclusive use of each teacher;
7. A communication system so that teachers can communicate with the main building office from their classrooms;
8. Well-lighted and clean teacher rest rooms, separate for each sex and separate from the student's rest rooms;
9. A separate, private dining area for the exclusive use of the teachers;
10. Free and adequate off-street paved parking facilities, which are protected against vandalism, properly maintained, and identified exclusively for teacher use;
11. Suitable, private closet space with lock and key for each teacher to store coats, overshoes, and personal articles;
12. Copies, exclusively for each teacher's use, of all texts used in each of the courses he is to teach;
13. Adequate chalkboard space in every classroom;
14. A complete and unabridged dictionary in every classroom;
15. Adequate books, paper, pencils, pens, chalk, erasers and other such material required in daily teaching responsibility.

All of the items demanded in Paragraph A. must be questioned in light of the existing facilities in the district to determine the extent of change or if, indeed, change is at all possible or necessary.

Any item involving the bulding or improvement or the use of space within the building should hinge first upon the requirements for classrooms. The board should reject such specific details as are requested here.

B. Special Clothing
By the beginning of the 19 - school year, the Board shall provide gym uniforms for physical education teachers, smocks for art and home economics teachers, laboratory coats for laboratory science teachers, shop coats for vocational and industrial arts teachers. Proper laundering service for all of said items shall be provided without charge to the teacher.

Paragraph B. must be considered strictly as a cost item.

C. Work Room and Office
By the beginning of the 19 - school year, an appropriate room and other facilities for teachers who work in more than one school building shall be assigned to them in each school in which they work to permit the effective discharge of their responsibilities to their pupils. Such teachers shall also be assigned a single classroom or office for their exclusive use outside of regular teaching hours, with a desk or other equivalent facility and a place to store materials and supplies for their personal use.

Paragraph C. again presents a question concerning the allocation of space in specific schools. It must be examined by the board in light of maintenance of flexibility with respect to the utilization of space, now and in the future.

D. Answering Service
The Board agrees to provide an answering service between p.m. and a.m. for teachers to report unavailability for work. Once a teacher has reported unavailability, it shall be the responsibility of the administration to arrange for a substitute.

E. Vending Machines
Upon the request of the Association, vending machines shall be installed in the teachers' lounge and teachers' lunchroom areas. The proceeds from all such machines shall be placed in a student scholarship fund created for that purpose. Awarding of scholarships shall be administered jointly by the Association and the superintendent. The Teacher-Administration Liaison Committee in each building established according to the provisions of ARTICLE XXII of this Agreement shall develop mutually acceptable procedures for servicing said machines and accounting for the funds.

The Teacher-Administration Liaison Committee clause is actually found in ARTICLE XVIII.

F. Keys
In order to permit freedom of access both during and after regular school hours, all teachers shall be given keys to the faculty lounge, teacher work area, and interior hallway gates of their base school, and, upon request, and subject to reasonable regulation, shall be provided with a key or other means of access to an outside door in their area of the building during nonschool hours.

Paragraph F. presents essentially a security problem with respect to the distribution of keys, and therefore, it must be so examined.

G. Student Transportation
By the beginning of the 19 - school year, the Board shall provide a vehicle and a driver for the transportation of individual students or small groups of students. Said vehicle and driver shall be used to transport sick students from school to home during the course of the school day.

This is not a term and condition of employment and, therefore, an illegal subject.

Article XVIII, *Teacher-Administration Liaison*

A. Building Level Faculty Council

1. Organization
The Association shall select a Faculty Council for each school building which shall meet with the principal at least once a month during the school day for the duration of the school year. Said Council shall consist of not more than one (1) member for every ( ) teachers in the school building, but shall in no event have less than ( ) members.

A recent PERC decision held that a Board-Teacher Liaison Committee proposal was a required topic for negotiations. This committee would have a majority of management representatives, would engage in discussions, not negotiations, and would meet at the agreement of the parties. The clause specifically guaranteed that the existence of the committee would not preclude the board from exercising any of its legal rights. With these caveats, PERC ruled that such a liaison committee, even though it would discuss only non-negotiable matters, was itself a required topic for negotiations. **Commercial Twp.**, PERC No. 80-20.

It is likely, therefore, that the establishment of monthly meetings

2. Areas for Faculty Council consideration
Areas for consideration by the Council shall include but not be limited to school building level decisions regarding:

a. Administration of this Agreement;
b. Facilitation of programs and recommendations of the Instructional Council hereafter established in ARTICLE XXIII of this Agreement;
c. Revision and development of building policies and practices.

B. Meetings with Superintendent
The Association's representatives shall meet with the superintendent at least once a month during the school year to review and discuss current school problems and practices and the administration of this Agreement

Article XIX, *Instructional Council*

A. Organization

1. Purpose

An Instructional Council shall be established and shall meet not later than 19 . The purpose of the Council shall be to strengthen the education program through recommendations, research, implementation, and evaluation by the superintendent and the Association to best meet the needs of the students, the schools, and the community. The Council may consider, but not be limited to, advising the Board and the Association on such matters as curriculum improvements, teaching techniques, instructional organizational patterns, experimentation, extra curricular programs, in-service training and staff development, pupil testing and evaluation, philosophy and educational goals of the district, teacher recruitment, research, educational specifications for buildings, and other related matters regarding the effective operation of the School District.

2. Membership

The Council shall consist of ( ) representatives appointed by the superintendent and ( ) representatives appointed by the Association.

3. Committees

The Council shall be authorized to establish sub-committees or ad hoc committees for specific projects to allow for those who would be affected by Council recommendations to have an opportunity to be involved.

4. Individual initiative for suggestions

The Council shall encourage the initiation of ideas and suggestions for projects by individual teachers, departments, grade levels, Association committees, administrators, Board members, students, parents, or other interested parties.

5. Additional members

Nothing in this ARTICLE shall be interpreted to prevent the Council from consulting or appointing to its committees such additional teachers, administrators, professional advisors, students, parents, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes. In the event that professional consultants are added, the Board agrees to provide adequate funds to pay for each such service.

6. Rules of procedure

The Council shall establish its own rules of procedure and shall provide for a rotating chairman who shall be responsible for the arrangement and conduct of meetings.

7. Meetings

The Council shall meet at least once each month.

8. Information

The Council and its sub-committees shall be provided with the same access to available school district information as provided to the Association as specified in ARTICLE V, Section A of this Agreement.

B. Reports

1. Board and Association action

The Board and the Association shall consider and study all written recommendations submitted by the Council for action. If the Board or the Association refuses to adopt any such recommendations, it shall state the specific reasons for such refusal in writing to the Council.

2. Minority reports

Reports of the Council or any sub-committee established by the Council may include minority as well as majority views.

C. Budget

As of September 1, 19 , the Board shall provide ($) dollars to the Instructional Council for the purpose of assisting said Council in establishing effective procedures for decision-making in implementing the responsibilities stated above in the School District.

D. Teacher Participation

1. Pay

Teachers who serve on the Instructional Council or any sub-committee organized by it beyond the regularly scheduled in-school day or in-school year shall be paid at the rate specified in ARTICLE VII, Section A, paragraph 4 of this Agreement.

between the Faculty Council and the school administration to discuss non-negotiable matters is legally negotiable, as a non-binding forum for the expression of teacher concerns over non-negotiable matters.

It is not clear whether PERC's analysis regarding a Board-Teacher Liaison Committee will be applied to Instructional Councils. The language in the Sample Agreement is much broader than that in the PERC case, and potentially much more restrictive.

Boards receiving this demand should consider establishing such a committee outside of the labor agreement, at the building and/or district level, for on-going consultation on non-negotiable matters.

2. Released time
In addition to whatever unassigned time they may be entitled to under the terms of this Agreement, teachers who are members of the Instructional Council or any of its subcommittees shall be provided with released time at the following rate for the purpose of working on any of the projects defined above:

a. Elementary Schools – ( ) periods per day
b. Junior High Schools – ( ) periods per day
c. Senior High Schools – ( ) periods per day
d. Other – ( ) periods per day

E. Clerical Assistance
Adequate secretarial and clerical assistance shall be provided for the Council.

Article XX, *Sick Leave*

A. Accumulative
As of September 1, 19 , all teachers employed shall be entitled to ( ) sick leave days each school year as of the first official day of said school year whether or not they report for duty on that day. Unused sick leave days shall be accumulated from year to year with no maximum limit.

B. Transfer from Other Districts
As of September 1, 19 , whenever the Board employs a teacher who has an unused accumulation of sick leave days from another school district in New Jersey, the Board shall grant additional sick leave credit in addition to the annual and accumulated sick leave provided in Section A of this ARTICLE as follows:

1. For the first year of employment in the School District a minimum of ( ) days or such lesser amount as may have been accumulated in the former district.
2. For each subsequent year of employment in the School District an additional ( ) days until all of the days accumulated in the former district have been credited.

The amount of sick leave granted beyond ten days a year is purely a matter of economic ability and educational need. Any concession in this area should achieve an equivalent concession by the union.

3. The accumulation of sick leave days from another district shall be credited in accordance with the procedure outlined above after certification from the prior employing school district. The days of sick leave so credited may be used immediately or if not so used shall be accumulative for additional leave thereafter as may be needed.
4. The aforementioned sick leave credit shall be given to any presently employed teacher under the provisions described above.

B.3. The transfer of sick leave credit is not required by law and has been negotiated into very few contracts.

C. Nonaccumulative
Nonaccumulative additional sick leave benefits shall be allowed to teachers according to the following schedule:

(Local Association option on type of additional nonaccumulative sick leave to be submitted.)

C. The State Board of Education, consistent with PERC and Appellate Court cases, recently ruled that automatic grants of sick leave beyond accumulated days were prohibited by **N.J.S.A.** 18A:30-6. **Ramsey Board of Education.** Boards must retain the discretion to act on requests for extended sick leave on an individual case basis.

D. Summer School
As of September 1, 19 , teachers employed in the summer school program shall be granted ( ) nonaccumulative sick leave days.

Paragraph D. covers summer school jobs which are not in the bargaining unit. For this reason, this clause should be rejected.

E. Notification of Accumulation
Teachers shall be given a written accounting of accumulated sick leave days no later than September of each school year.

F. Retirement
Upon retirement, the retiring teacher shall be compensated for his or her accumulated sick leave at the rate of pay at the time of retirement.

F. Payment for unused accumulated sick leave is being negotiated in more districts each year. The cost of these clauses varies tremendously, however, depending upon the rate of pay per

accumulated day, the minimum years of service for eligibility, and the maximum allowable payment per employee. There is no evidence that such a clause discourages sick leave abuse. Such clauses are merely reward systems for people who would not have used their sick leave anyway. See **Negotiations News,** May/June 1979, for a discussion of causes and curbs regarding excessive teacher absenteeism.

Any agreement on such a clause should provide for a fixed dollar per day payment, rather than keeping the payment to a percent of daily salary. This avoids an automatic increase in the cost of the benefit each year; every increase in the per day payment must be achieved through new bargaining.

For more information on payment for unused sick leave plans, see "Labor Lookout" in **School Leader,** May/June, 1981, and "An Analysis of Selected Contract Clauses," pp. 7-8 in **Negotiations 1981.**

Article XXI, ***Temporary Leaves of Absence***

A. Types of Leave

As of the beginning of the 19 - school year, teachers shall be entitled to the following temporary nonaccumulative leaves of absence with full pay each school year:

1. Personal

( ) days leave of absence for personal, legal, business, household or family matters which require absence during school hours. Application to the teacher's principal or other immediate superior for personal leave shall be made at least ( ) day(s) before taking such leave (except in the case of emergencies) and the applicant for such leave shall not be required to state the reason for taking such leave other than that he is taking it under this Section.

An effective personal leave clause should contain the following restrictions:

1. the reason for the requested leave should be stated.
2. personal leave cannot be taken on consecutive days, nor before or after a holiday, weekend, or sick day.
3. the superintendent has the discretion to deny the request for good reason, e.g., unavailability of substitutes or too many requests for a particular day.

For a detailed discussion, see **Negotiations 80,** p. 13.

2. Religious

Up to ( ) days per school year for observance of religious holidays, where said observance prevents the teacher from working on said days.

A.2. PERC has held that contract clauses granting paid leave for religious holidays, which is not deducted from personal or vacation days equally available to non-religious employees, is unconstitutional. **Hunterdon Central High School Board of Education,** PERC No. 80-4, aff'd, 86 **N.J.** 43 (1981). Permitting employees to use unspecified personal or vacation leave for religious observance, on the other hand, is legally negotiable.

3. School visitation

Up to ( ) days for the purpose of visiting other schools or attending meetings or conferences of an educational nature.

Paragraphs A.3. to A.9. must be analyzed locally regarding their cost and effect on administrative and

4. Community service leave

Any teacher who is a member of a community service organization or who is requested by any such organization to attend or participate in meetings or programs of the organization conducted during school hours shall be granted time off with pay for such purpose upon request.

5. Conferences of affiliates

Up to ( ) days for ( ) representatives of the Association to attend conferences and conventions of state and national affiliated organizations.

6. Legal

Time necessary for appearances in any legal proceeding connected with the teacher's employment or with the school system or in any other legal proceeding if the teacher is required by law to attend.

7. Death

Up to ( ) days at any one time in the event of death or serious illness of a teacher's spouse, child, son-in-law, daughter-in-law, parent, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, and any other member of the immediate household. Teachers shall be granted up to ( ) days in the event of death of a teacher's friend or relative outside the teacher's immediate family as defined above. In the event of the death of a teacher or student in the School District, the principal or immediate superior of said teacher or student shall grant to an appropriate number of teachers sufficient time off to attend the funeral.

8. Summer school

Up to a total of ( ) days at the end of a school year and/or at the beginning of a school year, as may be required to attend summer school classes and/or to travel to the place where such classes are to be held.

9. Marriage and honeymoon

Up to ( ) days for the purpose of marriage and honeymoon or up to ( ) days for the purpose of attending the marriage of a member of the immediate family.

10. Temporary Military

Time necessary for persons called into temporary active duty of any unit of the U. S. Reserves or the State National Guard. A teacher shall be paid his regular pay in addition to any pay which he receives from the state or federal government.

11. Good cause

Other leaves of absence with pay may be granted by the Board for good reason.

B. In Addition to Sick Leave

Leaves taken pursuant to Section A above shall be in addition to any sick leave to which the teacher is entitled.

C. NJEA Convention

Each teacher who attends the NJEA Convention shall fully be compensated for all costs incurred for travel, tolls, meals and hotel.

educational efficiency. A.6. should, at the least, not include legal appearances where the board and teacher are adversaries, e.g. tenure hearings and PERC hearings.

A.11. can present serious difficulties especially to boards who have "past practice" or "savings clauses." The granting of additional leaves might establish an unwanted precedent. Unfortunately, a labor contract sometimes has the effect of limiting the ability of an employer to grant fringe benefits in excess of the contract simply because the employer's action to help employees in a given situation can force the employer to grant the same benefit in all similar cases.

C. First, Chapter 123 as noted earlier, prohibits an employer from assisting a union. The NJEA is a union. While no decision in this area has been issued, it is very possible that any agreement to this clause or any payment under it, is a violation of law.

Practically, paragraph C. is unacceptable even if legal. There is no

limit on any expense incurred. The cost to the board could be enormous if only a portion of teachers sought reimbursement for their expenses. No boards, to our knowledge, have agreed to such a clause.

Article XXIII, *Extended Leaves of Absence*

A. Association
The Board agrees that up to ( ) teachers designated by the Association shall, upon request, be granted a leave of absence without pay for up to ( ) year(s) for the purpose of engaging in activities of the Association or its affiliates.

B. International and Federal Programs
A leave of absence without pay of up to ( ) years shall be granted to any teacher who joins the Peace Corps, VISTA, National Teachers Corps, or serves as an exchange teacher or overseas teacher, and is a full-time participant in either of such programs, or accepts a Fulbright Scholarship.

C. Outside Teaching
A teacher on tenure shall be granted a leave of absence without pay for up to ( ) years to teach in an accredited college or university, private school or other public school district.

D. Military
Military leave without pay shall be granted to any teacher who is inducted or enlists in any branch of the armed forces of the United States for the period of said service and three (3) months thereafter, or three (3) months after recovery of any wound or sickness at time of discharge. A similar leave shall be granted to the spouse of any teacher who is so inducted or who enlists to join him for the period of special training in preparation for duty overseas in combat zones.

In consideration of the extended leaves of absence demanded in Article XXIII, it should be noted that most of these leaves are for periods of time without pay. The board must bear in mind that future demands in this area will probably be for a certain percentage of pay for these leaves. Thus, while such leaves might not appear to be a cost item at this time, they might become so in the future.

The granting of any of the leaves in this area, other than sick leave, should be upon application to the superintendent for approval unless the board specifically provides otherwise. Such applications should provide sufficient notice for the Superintendent to secure a substitute, or the related clause may be ruled invalid. **South River**, PERC No. 81-108.

E. Maternity

1. Natural Birth

The Board shall grant maternity leave without pay to any teacher upon request subject to the following stipulations and limitations:

(a) Maternity leave shall commence and terminate, on the date requested by the teacher.

(b) Any teacher granted maternity leave without pay according to the provisions of this section may at her discretion elect to use all or any part of her accumulated sick leave during period of such absence and receive full pay and benefits for the same.

(c) Any teacher granted maternity leave shall at her request be restored to the exact same teaching position, subject area, and grade level vacated at the commencement of said leave.

(d) No teacher shall be required to leave work because of pregnancy at any specific time prior to expected childbirth nor be prevented from returning to work after childbirth solely on the ground that there has not been a time lapse of specific duration between childbirth and the desired date of return.

(e) The Board shall not remove any teacher from her duties during pregnancy unless the teacher cannot produce a certificate from her physician that she is medically able to continue teaching.

(f) The Board shall not discriminate against any person in violation of N.J.S.A. 10:5-1 et seq. The Law Against Discrimination, nor in violation of the Constitutions of the State of New Jersey and of the United States.

2. Any teacher who does not elect to take a maternity leave may continue to perform her duties as long as physically able to do so and will be entitled to return to her duties when her physician certifies that she is physically able to do so. The period of such absence will be deemed the same as for any other physical disability and she will be entitled to her annual and accumulated sick leave with pay during the period of absence.

For a detailed discussion of maternity, disability and childcare leave clauses, see "Maternity, Pregnancy Disability, and Childcare Leaves: An Analysis with Recommendations," in **Negotiations 1981**; for a case law update, see "Maternity Leave, Childcare and Sick Leave Benefits," at p. 30 of this book.

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3 **Adoption**

Any female teacher adopting an infant child shall receive similar leave which shall commence upon her receiving *de facto* custody of said infant, or earlier if necessary to fulfill the requirements for the adoption. No teacher on maternity leave shall, on the basis of said leave, be denied the opportunity to substitute in the School District in the area of her certification or competence.

E.3. Adoption differs from pregnancy-related disability and sickness. It is akin to child-rearing leave. There is no obligation to agree to adoption leave. This clause is discriminatory in that it applies only to female teachers.

F. Illness in Family

A leave of absence without pay of up to ( ) year(s) shall be granted for the purpose of caring for a sick member of the teacher's immediate family. Additional leave may be granted at the discretion of the Board.

Any time the board agrees to the phrase "immediate family" in the contract, it should be sure to clearly define who is included in that relationship.

G. Political

The Board shall grant a leave of absence without pay to any teacher to campaign for or serve in a public office, or to campaign for a candidate for a public office other than himself.

H. Good Cause

Other leaves of absence without pay may be granted by the Board for good reason.

I. Return from Leave

1. Salary

Upon return from leave granted pursuant to this ARTICLE, a teacher shall be considered as if he were actively employed by the Board during the leave and shall be placed on the salary schedule at the level he would have achieved if he had not been absent.

I.1. There is no requirement that credit for teaching be given during periods of extended leave without pay. It is rarely done unless the teacher works for the district for over 90 days in the academic year of the leave.

2. Benefits

All benefits to which a teacher was entitled at the time his leave of absence commenced, including unused accumulated sick leave and credits toward sabbatical eligibility, shall be restored to him upon his return, and he shall be assigned to the same position which he held at the time said leave commenced, if available or, if not, to a substantially equivalent position.

J. Extension and Renewals

All extensions or renewals of leaves shall be applied for and granted in writing.

Article XXIV, *Sabbatical Leaves*

A. Purpose

A sabbatical leave shall be granted to a teacher by the Board for study, including study in another area of specialization, for travel, or for other reasons of value to the school system.

A. This language will result in teachers receiving paid sabbatical leaves to do nothing of value to the district, e.g., irrelevant travel, or study for a career outside of teaching. Boards should insist that the primary purpose of any sabbatical is to improve the teacher's value to the district upon return.

B. Conditions

Sabbatical leave shall be granted, subject to the following conditions:

B. The word "shall" seems to remove any discretion from the board.

1. Percentage of teachers

If there are sufficient qualified applicants, sabbatical leaves shall be granted to a mimimum of (%) percent of teachers at any one time.

B.1. By granting only a minimum there is no way to predict the maximum number of teachers receiving sabbaticals. This is too open-ended for most boards. Besides, what will happen if the minimum number of teachers don't apply?

2. Requests

Requests for sabbatical leave must be received by the superintendent in writing in such form as may be mutually agreed on by the Association and the superintendent, no later than January 1, and action must be taken on all such requests no later than February 1, of the school year preceding the school year for which the sabbatical leave is requested.

B.2. The January application date may be too late for proper budgeting by the board. The February date may

3. Minimum time to qualify

The teacher has completed at least seven (7) full school years of service in the School District.

4. Pay

A teacher on sabbatical leave (either for one-half (½) of a school year or for a full school year) shall be paid by the Board at (%) percent of the salary rate which he would have received if he had remained on active duty if said leave is for study and at (%) percent if for travel or other reason.

5. Return

Upon return from sabbatical leave, a teacher shall be placed on the salary schedule at the level which he would have achieved had he remained actively employed in the system during the period of his absence and he shall be credited with all other benefits for which he would have entitled during the period of his leave and continuing thereafter upon his return.

not give the board enough time to evaluate the applications.

B.3.,4. and 5. are standard, except that most clauses don't permit sabbaticals for "travel or other reason" unless related to the teacher's responsibilities in the district. Most districts require that teachers who receive sabbatical leaves return to the district for one or two years following the sabbatical, or reimburse to the board the salary received during the sabbatical leave. See **Negotiations 80**, pp. 9-11, for more detail.

Article XXV, *Professional Development and Educational Improvement*

The question of the board agreeing to make certain payments in connection with this article is an appropriate subject for collective negotiations under the law.

A. Purpose

In our rapidly changing society teachers must constantly review curricular content, teaching methods and materials, educational philosophy and goals, social change and other topics related to education. The Board recognizes that it shares with its professional staff responsibility for the upgrading and updating of teacher performance and attitudes. The Board and the Association support the principle of continuing training of teachers and the improvement of instruction. The parties further agree that each teacher should fulfill the obligation for professional improvement in ways that best serve his own problems, functions, interests, and needs.

There is no need for A. Moreover, the second and fourth sentences are probably illegal in light of **Ridgefield Park**.

B. Assistance for Teachers

Within any one (1) week, a teacher who shall so request shall be granted at least thirty (30) minutes of counseling with his immediate superior. Such meetings shall be scheduled within the teacher work day and the teacher released from other duties therefor.

Paragraph B. provides for further reduction in the time a teacher might spend with students. Certainly such time can be found, without contract language, during preparation periods or, for elementary teachers, immediately after school. As professionals in other areas regularly expect to devote additional time to their profession beyond an eight hour day, so should teachers.

C. Programs

The Board agrees to implement the following at the beginning of the 19 - school year.

1. Pay and expenses for required training

To pay the full cost of tuition and other reasonable expenses incurred in connection with any courses, workshops, seminars, conferences, in-service training sessions, or other such sessions which a teacher is required and/or requested by the administration to take. Said teacher shall also be compensated for all time spent in actual attendance at said sessions beyond his regular working day and year at his regular rate as defined in ARTICLE VII, Section A, paragraph 4 of this Agreement.

2. Professional Development Committee for reimbursement

a. To establish a Professional Development Committee to act upon requests from teachers for authorization to attend courses, workshops, seminars, conferences, in-service training sessions or other such sessions. Within ( ) days after signing this Agreement, the superintendent and the president of the Association shall each appoint ( ) members to the Committee and they shall select a chairman from among themselves. The superintendent and the president of the Association may, from time to time, replace members appointed by them.

b. To pay the reasonable expenses (including fees, meals, lodging and/or transportation) incurred by teachers who attend such sessions with the approval of the Professional Development Committee.

If the committee under C.2. is entrusted with determinations of the value of various in-service and professional development courses on programs, this is probably an illegal subject.

3. In-service workshops, conferences, programs

a. The Board shall provide in-service professional improvement programs which shall be cooperatively planned in the instructional council to meet priorities jointly determined by the Association and the administration. In-service programs shall be conducted during the in-school teacher workday if teacher attendance is required. All programs conducted during the summer shall be voluntary and compensated at the rate set forth in ARTICLE VII, Section A, paragraph 4.

b. Teachers who participate in an in-service program shall be given credit for each program as provided in schedule D.

Ridgefield Park would seem to make the first sentence of C.3.a. an illegal topic, particularly if this is meant to prohibit the introduction of inservice topics which the administration, but not the union, deems appropriate. The balance of a. and all of b. relate to terms and conditions of employment.

4. Professional library

To expend up to ($) dollars per teacher each school year to purchase books, equipment and/or other educational resource materials, as may be recommended by the aforementioned Professional Development Committee for use by the professional staff for professional development and educational improvement. The Board shall provide adequate space for housing said books and materials in convenient and readily accessible locations.

C.4. is not a required subject of bargaining.

Unlike four or five years ago, teacher unions show little or no interest in clauses like this.

5. Recruitment

To establish a Recruitment Committee to study and improve teacher recruitment. This Committee shall develop ways to utilize incumbent teachers who agree to be recruiters. The superintendent and the president of the Association shall each appoint ( ) members to this Committee and they shall choose a chairman from among themselves. Teachers who participate as members of this Committee shall suffer no loss of compensation and shall be reimbursed for any travel and expenses incurred in the performance of their functions.

C.5. This is not a term and condition of employment but is a major educational policy function and is, therefore, an illegal area.

6. Summer program for professional development

To appropriate ($) dollars for a Voluntary Summer Program for Professional Development to afford teachers the opportunity to participate in activities which they propose and which shall contribute to the professional development of the participating teacher and to the educational advantage of the children served by the District. Participation in this program shall take place for a period of not more than one (1) month during July and/or August and participants shall be remunerated on a prorated basis, according to their monthly salary for the school year beginning July 1 of the summer employed.

a. Teachers may apply for this program no later than . Applications shall be submitted to a Screening Committee consisting of ( ) members selected by the superintendent and ( ) members selected by the Association. The Committee shall receive, review, and approve or disapprove applications. All applicants shall be notified no later than May 1 of each year as to whether their applications have been approved.

b. The funds appropriated for this program shall be used to finance projects evaluated by the Screening Committee as fulfilling the objectives of the program.

c. The Screening Committee shall establish its own rules of procedure.

7. Innovative grants

To appropriate ($) dollars to establish a grant program to make funds available to teachers interested in designing and implementing innovative educational ideas and techniques.

a. The aim and purpose of this Section shall be to encourage creative and innovative teachers to experiment in order to better meet the educational needs of the students of the School District.

b. An Innovative Review Committee consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association shall be established no later than October 1, 19 . Said Committee shall receive, review, and approve or disapprove applications for grants. Applications for grants shall be submitted no later than and awards shall be announced no later than

c. No individual grant under the terms of this Section shall exceed ($) dollars.

d. The Innovative Review Committee shall establish its own rules of procedure.

8. Experimentation

a. The Association and the Board have a mutual responsibility to promote better instruction. The Board welcomes Association participation in all aspects of strengthening the education program to best meet the needs of the students, the schools, and the community.

C.8.a. is a general goal statement and should be rejected. It belongs in board policy, not in a labor contract.

With respect to any committee set up to review educational policy or programs, boards must be certain that input is not limited to the union. T & E requires broad participation by teaching staff members and, where appropriate, by the community. No contractual agreement should limit that participation.

b. The Association may participate in any aspect of an experimental or other project or program. Such participation shall include, but not be limited to, all phases of proposals, inquiry, study, research, deliberations, recommendations, implementation, evaluation, and adoption. Any aspect of an experimental program which would affect the terms and conditions of teacher employment shall be negotiated with the Association before implementation.

C.4. through 8. are almost never contained in contracts.

Article XXVI, *Supervision of Student Teachers*

A. Mutual Responsibility

There is a continuing need for the recruitment of able teacher candidates and for the

Consultation in the area of student teacher supervision seems desirable. Control of that program either by in-

improvement of their preparation. Teachers enlisted to teach in any situation must be provided an education based on the best academic preparation supplemented with numerous planned experiences which can provide a working understanding of the students and classroom with which teachers must function effectively. Through the cooperation of the School District and the Association, the student teacher is provided with the setting to apply the professional knowledge and skills, theories, and philosophies which have been developed through college courses and related experiences. The Board and the Association accept the joint responsibility to prepare teachers and to provide student teachers with direct field experiences in the School District that are relevant to the teaching act.

B. Procedures

The following procedures shall govern the supervision of student teachers:

1. Teaching experience

No teacher shall have a student teacher under his supervision unless said teacher has had at least three years of teaching experience, with the most recent year in his present position.

2. Voluntary participation

Supervision by a teacher of a student teacher shall be voluntary. Each teacher shall be polled prior to any school year for willingness to participate in the student teaching program, but this shall not be construed as acceptance of any particular student teaching assignment.

3. Academic record of student teachers

Prior to the assignment of student teachers, the superintendent shall request each prospective student teacher to provide prospective cooperating teachers a transcript of college courses and grades to date, statements relative to his academic proficiency from not fewer than ( ) of his college instructors, and a statement from his college assessing his potential strengths and weaknesses as exhibited in any previous field experiences or related training programs in classroom procedures or student relationships.

4. Consent

Each prospective cooperating teacher may accept or reject any student teacher. The teacher shall receive the request to take a student teacher at least ( ) weeks prior to the student's introduction to the classroom.

5. Released time

Each cooperating teacher shall be provided with released time with pay for attendance at regularly scheduled orientation and evaluation sessions sponsored by a student teacher's college or university.

6. Assignments

A cooperating teacher shall not involuntarily be given additional assignments outside of his regular responsibilities during the period he is supervising a student teacher.

7. Assuming responsibilities

The cooperating teacher and the student teacher shall assess the latter's readiness to assume teaching responsibilities and the cooperating teacher shall have authority for determining in what degrees those responsibilities shall be assumed.

8. Explanation of school personnel responsibilities

The superintendent, or his designee, shall arrange for other school personnel, including teachers, principal, remedial instructors, guidance counselors, curriculum coordinator, school psychologist, school nurse, and school social worker to assist the cooperating teacher in providing an understanding of their roles for the student teacher.

9. Materials and supplies

a. Upon request, a cooperating teacher shall be provided with a duplicate copy of all instructional materials and teacher manuals for use by the student teacher assigned.

b. Upon request, a cooperating teacher shall be provided with those school records which he feels necessary for an understanding of the field experience by the student teacher. Upon completion of the field experience, the cooperating teacher shall arrange with the student teacher for the return of all such copies of student records.

10. Eligibility to teach

A student teacher shall be permitted to teach unsupervised only in areas for which he will be eligible for certification and only after the approval of the cooperating teacher.

11. Substitution

In accordance with State regulations, a student teacher can not be used as a substitute teacher.

12. Information for cooperating teachers

The superintendent, or his designee, shall arrange for each cooperating teacher to be provided in writing with the following in accordance with college procedures:

a. Information about the student teacher, such as his background, college record, interests, talents, and special problems of which the cooperating teacher and school administrator should be aware.

b. Information about the college program and the college's expectations and requirements for student teachers.

c. Specific information about the date the student will begin the assignment, when he will complete the assignment, and holidays or special events which affect the

dividual teachers or by the union does not. Almost no district in the State has negotiated on this topic.

The control over student teaching programs by the union through negotiated agreement is illegal. Certain provisions of this article do relate to teachers' terms and conditions of employment and are required subjects.

Given **Ridgefield Park**, it would appear that the following provisions are illegal: B.1., B.2., B.3., B.4., B.7., B.8., B.9.b., B.10., B.11., B.12.a. and b. and B.13. Those governing terms and conditions would seem to be: B.5., B.6., B.9.a. and B.12.c.

Some of the illegal matters are simply not terms and conditions of employment of the teacher (such as B.11., already covered by State law; it does not directly affect a teacher's working conditions). Others go to major educational policy-making (such as B.7.). Some of these may be sound administrative practice; they are not, however, appropriate topics for negotiations.

student teacher's attendance.

13. Orientation

Prior to the commencement of the student teaching experience, the superintendent shall request that the prospective student teacher visit the School District for appropriate orientation by the superintendent or his designee and the cooperating teacher.

Article XXVII, *Protection of Teachers, Students and Property*

A. Unsafe and Hazardous Conditions

Teachers shall not be required to work under unsafe or hazardous conditions or to perform tasks which endanger their health, safety, or well-being.

The topic of employee safety is a required subject. Recent discussions of violence against teachers should spur interest in this subject area.

With respect to the remaining paragraphs in Article XXVII, Title 18A of the New Jersey law imposes certain specific requirements and liabilities on the board. It should be emphasized again that the attempt to paraphrase the law, sections of the law, or intentions of the law, should not be agreed to. If it is deemed necessary to discuss or to quote the law, it must be done verbatim. Due to this aspect of this particular demand, the board should, with its attorney, carefully consider this specific proposal. More specifically, the terms "unsafe or hazardous conditions which endanger health, safety or well being" is conspicuously vague. Does the lack of air conditioning endanger well being? It is important to note that grievances may arise from such a provision, and decisions flowing from such grievances may be beyond the ability of the board to adopt without the expenditure of vast sums of money.

B. Procedure for Hazardous Conditions

When the Association makes a determination on a district-wide basis or a Faculty Council, as heretofore established in ARTICLE XXII, determines on a building basis that conditions are unsafe or hazardous for the health, safety, or well-being of students and teachers, the following conditions shall be established and exist until rescinded by the same body:

1. Meetings

In the event of any disorder or disruption in the regular school program, the Board, superintendent or affected building principals shall meet with the Association immediately on request of the Association to develop mutually acceptable programs to guarantee the safety of students, teachers, and property.

B.1. This clause, to the extent it does not deal with **teachers'** safety and personal property, is non-negotiable. PERC has ruled that a public employer can refuse to meet or negotiate with employee representatives **during an emergency situation,** even though employees' terms and conditions were affected. **Camden,** PERC No. 80-3. The Faculty Council clause is actually found in ARTICLE XVIII.

2. Association representatives

Representatives of the Association shall be allowed free access to buildings and teachers until conditions are no longer unsafe and hazardous.

3. Closings

The Association shall be consulted and be allowed to submit recommendations for consideration before any judgment is made to open or close school.

B.3. Other rulings, noted in the commentary accompanying ARTICLE XI, hold that the implementation of a management decision cannot be held up by a requirement to meet with employees or unions prior to the implementation. See **New Milford,** PERC No. 81-36.

4. Unauthorized visitors

During said unsafe and hazardous period, persons not employed by the School District shall not be allowed into any school without the knowledge and permission of the senior faculty representative in a building. This shall apply to students visiting a school other than where they are assigned.

C. Reasonable Force

As specified in 18A:6-1, a teacher may, within the scope of his employment, use and apply such amount of force as is reasonable and necessary: To quell a disturbance threatening physical injury to others; to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil; for the purpose of self-defense; and for the protection of persons or property.

D. Action before Board or Commissioner

Whenever any action is brought against a teacher before the Board or before the Commissioner of Education of the State of New Jersey which may affect his employment or salary status, the Board of Education shall reimburse him for the cost of his defense if the action is dismissed or results in a final decision in favor of the teacher.

E. Assault

1. Legal assistance

The Board shall give full support including legal and other assistance for any assault upon the teacher while acting in the discharge of his duties.

2. Leave

When absence arises out of or from such assault or injury, the teacher shall be entitled to full salary and other benefits for the period of such absence but shall not forfeit any sick leave or personal leave.

3. Reimbursement for personal property damage

The Board shall reimburse teachers for the reasonable cost of any clothing or other personal property damaged or destroyed as a result of an assault suffered by a teacher while the teacher was acting in the discharge of his duties within the scope of his employment.

4. Medical

The Board shall reimburse a teacher for the cost of medical, surgical or hospital services incurred as the result of any injury sustained in the course of his employment.

5. Workmen's Compensation

Benefits derived under this or subsequent Agreements shall continue beyond the period of any Workmen's Compensation until the complete recovery of any teacher when absence arises out of or from assault or injury.

F. Reporting Assaults

1. Principal or immediate superior

Teachers shall immediately report cases of assault suffered by them in connection with their employment to their principal or other immediate superior.

2. Superintendent

Such notification shall be immediately forwarded to the superintendent who shall comply with any reasonable request from the teacher for information in the possession of the superintendent relating to the incident or the persons involved, and shall act in appropriate ways as liaison between the teacher, the police, and the courts.

G. Nurse

A school nurse shall be scheduled to be in each building for the entire school day as heretofore defined in ARTICLE VII, Section A of this Agreement.

Article XXVIII, *Maintenance of Classroom Control and Discipline*

A. Definition of Responsibilities

A definition of the duties and responsibilities of all administrators, coordinators, supervisors and other personnel pertaining to student behavior shall be reduced to writing by

B.4. This is an illegal delegation of managerial authority to a labor union.

E.1. through 4. would be acceptable if they stipulated that such injury or legal proceeding was not determined to be the fault of the teacher.

F.2. Access to confidential student records is not a term and condition of employment and, therefore, is an illegal topic.

Paragraph G. deals with a demand that requires the board to negotiate the scheduling of nurses. The board must insist that such a question is a matter for it to determine unilaterally. It represents a basic policy question and is not an item to be included in the terms and conditions of employment. N.J.S.A. 18A:40-1 et seq. prescribes the board's duties with respect to scheduling school nurses.

The board must retain the ultimate responsibility for the maintenance of control and discipline in the classroom. This is not an item that can be delegated to committees and it should not be negotiated.

the superintendent and presented to each teacher at the start of each school year.

B. Special Assistance
When, in the judgment of a teacher, a student requires the attention of the principal, assistant principal, a counselor, psychologist, physician or other specialist, he shall so inform his principal or immediate superior. The principal or immediate superior shall arrange as soon as possible for a conference among himself, the teacher, and an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution.

C. Disruptive Students
When, in the judgment of a teacher, a student is by his behavior seriously disrupting the instructional program to the detriment of other students, the teacher may exclude the student from the classroom and refer him to the principal. In such cases the principal shall arrange as soon as possible, and under normal circumstances not later than the conclusion of the following school day, a conference among himself, the teacher and possibly an appropriate specialist to discuss the problem and to decide upon appropriate steps for its resolution. If the teacher in question objects to the proposed readmission of said student to the classroom, the matter shall, within twenty-four (24) hours after the decision by the principal, be referred to an ad hoc committee consisting of two (2) members appointed by the principal, two (2) members appointed by the teacher and a fifth (5th) member, who shall act as chairman, appointed by the other four (4) members. Said committee shall consult with the teacher, the principal, and other appropriate professional and/or lay persons, including the student's parents and/or guardians, and shall render a final decision in the matter within ( ) days after the conclusion of such consultation.

D. Student Behavior Committee
As soon as possible after the execution of this Agreement, a joint Student Behavior Committee (consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association) shall be established to develop appropriate guidelines to be used by teachers in handling disruptive students and to develop constructive programs for disruptive students whose presence in regular classes represent unusual problems for the regular learning process. Recommendations shall be submitted to the Instructional Council established pursuant to ARTICLE XXIII of this Agreement.

E. Building Procedures
An appropriate student disciplinary procedure shall be developed for each school building by its Liaison Committee (established pursuant to ARTICLE XXII of this Agreement). Said procedure shall be submitted to the building faculty for approval prior to its implementation.

F. Expanded Involvement
Nothing in this ARTICLE pertaining to the development of guidelines and procedures by the Student Behavior Committee or each school's Liaison Committee shall be interpreted to prevent these committees from consulting or adding to their number such additional teachers, professional advisors, parents, students, or other persons as the original members herein designated shall determine are desirable and appropriate for said purposes.

The board may want to arrange for the use of a committee to provide suggestions and advice on this topic.

The Liaison Committee article is actually ARTICLE XVIII; the Instructional Council article is found at ARTICLE XIX.

Article XXIX, *Insurance Protection*

A. Full Health-Care Coverage
As of the beginning of the 19 - school year, the Board shall provide the health-care insurance protection designated below. The Board shall pay the full premium for each teacher and in cases where appropriate for family-plan insurance coverage.

1. Provisions of coverage
Provisions of the health-care insurance program shall be detailed in master policies and contracts agreed upon by the Board and the Association and shall include:

a. Hospital room and board and miscellaneous costs
b. Out-patient benefits
c. Laboratory fees, diagnostic expenses, and therapy treatments
d. Maternity costs
e. Surgical costs
f. Major-medical coverage

2. Carrier(s)
The health insurance carrier(s) shall be for the basic hospitalization and medical-surgical coverage, and for the major-medical coverage.

3. Special program(s) and carrier(s)
In addition to the above stated program, provision shall be made to provide the following health programs:

a. Prescription drug costs
b. Dental care
c. Optical care

PERC has recently ruled that the choice of the insurance carrier is **not** a required topic for negotiations, as long as the level of benefits is substantially equivalent. **City of Newark**, PERC No. 82-5.

More and more boards are negotiating on the cost of a benefit, rather than the benefit itself. For example, a board may agree to pay $50 per employee toward a prescription drug insurance plan; employees pay the rest of the insurance premium. This approach has numerous benefits:

- it prevents the board's automatic assumption of increases in insurance costs;
- it makes employees aware that such benefits are substantial cost items;

The Board shall make full payment for the services listed above in this paragraph with a carrier(s) approved by the Association.

4. Complete annual coverage

For each teacher who remains in the employ of the Board for the full school year, the Board shall make payment of insurance premiums to provide insurance coverage for the full twelve (12) month period commencing September 1st and ending August 31st. When necessary, payment of premiums in behalf of the teacher shall be made retroactively or prospectively to assure uninterrupted participation and coverage.

B. Retirement Coverage

The Board shall provide for continuance of health-care insurance after retirement on the terms detailed in the master policies and contracts agreed upon by the Board and the Association.

C. Description to Teachers

The Board shall provide to each teacher a description of the health-care insurance coverage provided under this ARTICLE, no later than the beginning of the 19 - school year, which shall include a clear description of conditions and limits of coverage as listed above.

- it may make the union interested in dropping a demand for a new insurance benefit;
- and, if the board agrees in subsequent negotiations to increase its share of the premium cost, it does so as a concession to the union, in exchange for which a concession should be obtained from the union.

D. Washington National Meetings

The superintendent shall permit representatives of the NJEA Washington National Income Protection Plan to meet with teachers for the purpose of enrolling new members and permitting present members to adjust their coverages at faculty meetings on a district or building level at the request of the Association. Requests for such meetings shall be made no more than once a year. It is agreed that the Washington National representative shall be permitted a minimum of twenty (20) minutes for the meeting.

If it is agreed that Washington National representatives may conduct meetings in the school, such meetings should not constitute one of the meetings provided elsewhere in the contract. There is no reason why it should constitute a "faculty meeting." Because Washington National is, in effect, a subsidiary of NEA, it is advisable to allow meetings only outside of the school day. Certainly, teachers should not be compensated for their voluntary attendance at this meeting.

Article XXX, *Personal and Academic Freedom*

A. Personal

The personal life of a teacher is not an appropriate concern or attention of the Board except as it may directly prevent the teacher from performing properly his assigned functions during the workday.

B. Citizenship

Teachers shall be entitled to full rights of citizenship, and no religious or political activities of any teacher or the lack thereof shall be grounds for any discipline or discrimination with respect to the professional employment of such teacher, providing said activities do not violate any local, state or federal law.

C. Academic

The Board and the Association agree that academic freedom is essential to the fulfillment of the purposes of the School District, and they acknowledge the fundamental need to protect teachers from any censorship or restraint which might interfere with their obligation to pursue truth in the performance of their teaching functions. Accordingly, they agree as follows:

While it should not be the board's intention to in any way deprive a teacher of any of the rights that an individual, or an individual in the capacity of a teacher, is provided as a matter of law, this type of clause in the contract would be an inappropriate matter for the purpose of collective negotiations.

It should be noted, however, that the provision of this demand contained in paragraph A, which states that the personal life of a teacher is not an appropriate concern of the board, is not a sufficiently clear statement. The board must have a definite interest in the personal life of a teacher as it might bear upon his or her suitability for teaching in the district.

1. Controversial material

Teachers shall be guaranteed full freedom in classroom presentations and discussions and may introduce politically, religiously or otherwise controversial material, provided only that said material is relevant to the course content.

2. Personal opinion

In performing their teaching functions, teachers shall be guaranteed full freedom in expressing their personal opinions on all matters relevant to the course content, provided, however, that when they do so they shall make every effort to indicate that they are speaking personally and not on behalf of the school, its administration, or the Board.

C.1. has been ruled to be a non-negotiable topic. **New Milford**, PERC No. 81-36. PERC did not address the constitutional questions that were raised. It is clear, however, that the constitutional freedoms of public employees can and have been protected outside the confines of the negotiated agreement.

3. Censorship
Teachers shall not be censored or restrained in the performance of their teaching functions on the ground that the material discussed and/or opinions expressed are distasteful or embarrassing to those in authority in the school system or detrimental to school or school system public relations.

In June, 1978, PERC ruled that teachers had no right to use students as messengers for union notices to parents. The decision would seem to apply to classroom discussion of the district labor disputes which are initiated by the teacer.

Article XXXI, *Books and Other Instructional Materials and Supplies*

A. Purpose
The Board shall allocate sufficient funds to provide for the purchase and/or replacement of textbooks, library books, instructional materials, supplies and equipment of sufficient quality and quantity to enable teachers to properly fulfill their teaching responsibilities. Specifically, the Board agrees that during the 19 - school year it shall provide the following allocations:

1. Per pupil costs
Funds for instructional materials and supplies shall be increased by not less than ($) dollar(s) per pupil for kindergarten through sixth grade and by not less than ($) dollar(s) per pupil for seventh grade through twelfth grade. Teachers purchasing materials and/or supplies with the advance approval of their principal or immediate superior shall be reimbursed upon submission of an appropriate receipt of purchase.

2. Home instruction
($) dollars per home instructor shall be used to purchase additional materials and supplies necessary in carrying out the instructional program. Such teachers shall be reimbursed up to said amount upon submission of an appropriate receipt of purchase.

3. Petty cash
A Petty Cash Fund shall be established in each building for use in purchasing incidental supplies for classroom instructional use. Expenditures from this fund shall be at the discretion of the teacher. The teacher shall be reimbursed upon presentation of a paid receipt for such expenditures to the principal, up to the following maximums.

a. Secondary schools – ($) dollars per teacher per month

b. Elementary schools – ($) dollars per teacher per month

A. Procedures for reimbursement for purchase of equipment and supplies are negotiable. But the decision as to how much money to make available for reimbursement, and what materials are needed to enable teachers to fulfill their responsibilities is not negotiable.

B. Review and Evaluation of Books and Materials

1. Procedure
An improved procedure for reviewing and evaluating books and other instructional materials and supplies shall be instituted as soon as possible after the effective date of this Agreement. Said procedure shall provide, among other things, for the following:

a. A separate committee shall be established to make recommendations for each subject area;
b. School-based teachers shall constitute a majority of each such committee;
c. A subject supervisor shall not be able to override the recommendations of such committee;
d. The recommendations of each such committee shall be published and distributed to all schools; and
e. The distinction between books adopted for system-wide use and those for which there is freedom for individual school and/or teacher choice shall clearly be defined.

B. It is not clear if PERC's ruling regarding Board-Teacher Liaison Committees will extend to such things as textbook selection committees. Certainly, B.1.c. is illegal; such committees cannot interfere whatsoever with management prerogatives.

2. Textbook Policy Committee
A Textbook Policy Committee (consisting of ( ) members appointed by the superintendent and ( ) members appointed by the Association) shall be established as soon as practicable to work out the mechanics of the aforesaid procedure so that it may be implemented by the beginning of the 19 - school year.

3. Pay and/or released time
Teachers serving on committees organized pursuant to this ARTICLE shall be provided with scheduled released time for this purpose and/or paid at the rate specified in ARTICLE VII, Section A, paragraph 4 of this Agreement, for time spent in excess of the regularly scheduled in-school work year or workday.

C. Standards for Materials

1. Criteria
Instructional materials used in the School District shall reflect the multi-ethnic nature of our society and shall evidence a sensitivity to prejudice, to stereo-

C.1. The criteria for textbook selection listed here may be excellent but, because this clause does not relate to

types, and to materials offensive to minority groups, as measured by the following criteria:

a. The suggestion, by omission or commission or by over- or under-emphasis, that any racial, religious, or ethnic segment of the population is more or less capable or more or less important than any other in the mainstream of American life is to be avoided.

b. Opportunities for full, fair, accurate, and balanced treatment of minority groups should be utilized.

c. Recognition of minority groups by frequent placement in positions of leadership and centrality is necessary.

d. Both male and female members of minority groups should be depicted in situations which exhibit them as worthy examples of mature American citizens.

e. Attention should be given to the presentation of fully integrated human groupings and settings indicating equal status.

f. The group representation of individuals should be clearly apparent and the exclusive utilization of Caucasian facial features avoided in such representation where appropriate.

g. Broad-ranging, well-planned, and comprehensive materials which represent the contribution and achievements of minority groups in art, science, history, literature, and all other aspects of life and culture should be apparent in the design of materials.

h. Life in contemporary urban environments, as well as rural and suburban environments, should be pictured.

2. Materials Center

A materials center shall be maintained and charged with the responsibility of seeking multi-ethnic materials related to study units being taught. The center shall also develop and maintain a current list of resource centers and persons within and outside the community.

a term and condition of employment, it is a prohibited subject for negotiations.

D. Testing

Achievement tests which are to be used by the School District for district-, school-, subject, or grade-wide purposes shall be approved in advance by the Instructional Council as heretofore established in ARTICLE XXIII of this Agreement. The Instructional Council shall consider the kind and type of test, the use to which a test is to be put, and the dissemination of the test results and any interpretation of those results.

D. This is an illegal subject.

Article XXXII, *Deduction from Salary*

A. Association Payroll Dues Deduction

1. The Board agrees to deduct from the salaries of its teachers dues for the Association, the County Education Association, the New Jersey Education Association or the National Education Association, as said teachers individually and voluntarily authorize the Board to deduct. Such deductions shall be made in compliance with Chapter 233 N. J. Public Laws of 1969 (NJSA 52:14-15.9e) and under rules established by the State Department of Education. Said monies together with current records of any corrections shall be transmitted to such person as may from time to time be designated by the Association by the 15th of each month following the monthly pay period in which deductions were made. The person designated shall disburse such monies to the appropriate association or associations.

2. Each of the associations named above shall certify to the Board, in writing, the current rate of its membership dues. Any association which shall change the rate of its membership dues shall give the Board written notice prior to the effective date of such change.

A. is basically a restatement of law.

B. Local, State and National Services

The Board agrees to deduct from teachers' salaries money for local, state and/or national association services and programs as said teachers individually and voluntarily authorize the Board to deduct and to transmit the monies promptly to such association or associations. Any teacher may have such deductions discontinued at any time upon sixty (60) days' written notice to the Board and the appropriate association.

B. May be intended for PAC contributions and appears illegal, because it is outside the present statutory authority of boards.

Article XXXIII, *Miscellaneous Provisions*

A. Nondiscrimination

The Board agrees that there shall be no discrimination, and that all practices, procedures, and policies of the school system shall clearly exemplify that there is no discrimination in the hiring, training, assignment, promotion, transfer, or discipline of teachers or in the application or administration of this Agreement on the basis of race, creed, color, religion, national origin, sex, domicile, marital status, age or sexual orientation.

A. This paragraph is, for the most part, a paraphrase of law. It is a much better practice to quote the law verbatim than to paraphrase it. It is also advisable to prohibit arbitration over such legal matters, and to direct grievances over such matters to the appropriate legal forum.

B. Board Policy
This Agreement constitutes Board policy for the term of said Agreement, and the Board shall carry out the commitments contained herein and give them full force and effect as Board policy.

Paragraph B. is a superfluous paragraph that simply states that the board must carry out the commitments contained in the contract and gives them the effect of board policy. It is, of course, the intention of the board, as well as the association, to adhere to the provisions of the contract.

C. Savings Clause
Except as this agreement shall otherwise provide, all terms and conditions of employment applicable on the effective date of this Agreement to employees covered by this Agreement as established by the administrative procedures and practices in force on said date, shall continue to be so applicable during the terms of this agreement. Unless otherwise provided in this Agreement, nothing contained herein shall be interpreted and/or applied so as to eliminate, reduce, or otherwise detract from any teacher benefit existing prior to its effective date.

C. This paragraph is not a "savings clause" (see ARTICLE IV.B., **Statutory Savings Clause.**) Rather it is a clause which retains all possible benefits from any source. It is commonly called a "past practice" clause. This type of provision can be extremely detrimental to a board and should be avoided. If included in the agreement, the result would be to include by reference in the contract all pre-existing "rights" provided or presumed in statutes, policies, administrative decisions or even practices of individual administrators.

D. Separability
If any provision of this Agreement or any application of this Agreement to any employee or group of employees is held to be contrary to law, then such provision or application shall not be deemed valid and subsisting, except to the extent permitted by law, but all other provisions or applications shall continue in full force and effect.

D. This is a standard clause.

E. Compliance between Individual Contract and Master Agreement
Any individual contract or job description between the Board and an individual teacher, heretofore or hereafter executed, shall be subject to and consistent with the terms and conditions of this Agreement. If an individual contract or job description contains any language inconsistent with this Agreement, this Agreement shall be controlling.

This is a standard clause. The board has the authority to establish job descriptions unilaterally, but they must be in compliance with the terms of the negotiated agreement.

F. Printing Agreement
Copies of this Agreement shall be printed at the expense of the Board after agreement with the Association on format within thirty (30) days after the Agreement is signed. The Agreement shall be presented to all teachers now employed, hereafter employed, or considered for employment by the Board.

G. Notice
Whenever any notice is required to be given by either of the parties to this Agreement to the other, pursuant to the provision(s) of this Agreement, either party shall do so by telegram or registered letter at the following addresses:

1. If by Association, to Board at
   (address)
2. If by Board, to Association at
   (address)

Article XXXIV, *Duration of Agreement*

A. Duration Period
This Agreement shall be effective as of **[Date of implementation]** and shall continue in effect until **[Date of expiration]** .

[NOTE – In Agreements which extend for more than one (1) year and negotiations over fiscal matters are to be conducted annually, insert the phrase:
subject to the Association's right to negotiate each annual budget with negotiations commencing no later than October 1 of each year, under procedures defined in ARTICLE II, and . . .]

If the contract is going to exist for a particular period of time, but certain specific items, i.e., salaries, are to be negotiated during the course of the duration of the remainder of the contract, it should be specifically so stated in a reopener clause. There should be no vagueness whatsoever

subject to the Association's right to negotiate over a successor Agreement as provided in ARTICLE II. This Agreement shall not be extended orally, and it is expressly understood that it shall expire on the date indicated, unless it is extended in writing.

B. Status of Incorporation

Option 1 [For Incorporated Local Association]

In witness whereof the parties hereto have caused this Agreement to be signed by their respective presidents, attested by their respective secretaries, and their corporate seals to be placed hereon, all on the day and year first above written.

ASSOCIATION	BOARD OF EDUCATION
By	By
Its President	Its President
By	By
Its Secretary	Its Secretary

Option 2 [For Unincorporated Local Association]

In witness whereof the parties hereto have caused this Agreement to be signed by president and secretary and the Board has caused this Agreement to be signed by its president, attested by its secretary and its corporate seal to be placed hereon, all on the day and year first above written.

ASSOCIATION	BOARD OF EDUCATION
By	By
Its President	Its President
By	By
Its Secretary	Its Secretary

Article , Representation Fee

A. Purpose of Fee

If an employee* does not become a member of the Association during any membership year (i.e., from September 1 to the following August 31), which is covered in whole or in part by this Agreement, said employee will be required to pay a representation fee to the Association for that membership year. The purpose of this fee will be to offset the employee's per capita cost of services rendered by the Association as majority representative.

*Use the appropriate term to designate all members included in the bargaining unit.

with respect to these matters. The Sample Agreement language on a reopener clause refers to "each annual budget," which is totally inappropriate. If it stated "over salary" or "over economic benefits" it would be more acceptable. October 1 is too early for salary negotiations to occur in most districts.

The first sentence suggests that, even if an agreement containing an agency shop provision were in effect for only a portion of the school year, a non-member employee would have to pay a representation fee for the entire school year.

In fact, use of the term "membership year", defined as September 1 to August 31, implies that a contract that is effective on July 1, 1981 and which contains an agency shop clause may be entitling the union to collect agency shop fees for the **previous school year**. Since the membership year extends to August 31, 1981, the contract with the agency shop clause covers that membership year "in part", and retroactive payment may be due.

To avoid this, boards should insist that representation fees be deducted **prospectively only**, beginning either with July 1 or September 1.

The second sentence describes the purpose of the fee, but also should cite, in the interests of thoroughness, those excluded union activities for which fee payment is not required, i.e., partisan, political activities or

causes or ideological positions only incidentally related to terms and conditions of employment, and all benefits available only to members of the majority representative.

B. Amount of Fee

1. Notification

Prior to the beginning of each membership year, the Association will notify the Board, in writing, of the amount of the regular membership dues, initiation fees and assessments charged by the Association to its own members for that membership year. The representation fee to be paid by non-members will be equal to 85% of that amount.

PERC has determined that the size of the representation fee is a matter to be determined by the union, subject to appeal by the employee to the appropriate bodies (see below), and is therefore a non-negotiable topic. **Woodbridge**, PERC No. 81-131. The preferred language in the last sentence is "will not exceed 85%..." since the actual fee will vary among different unions according to what percent of their dues are used for collective bargaining purposes in any year covered by the representation fee clause.

The contract should also state: "The Association will certify to the Board prior to the start of each membership year that the amount of the represenation fee to be assessed does not exceed 85% of dues, fees and assessments and does not include any amount of dues, fees and assessments that are expended 1) for partisan, political or ideological activities or causes that are only incidentally related to terms and conditions of employment or 2) applied toward the cost of benefits available only to members of the majority representative.

2. Legal Maximum

In order adequately to offset the per capita cost of services rendered by the Association as majority representative, the representation fee should be equal in amount to the regular membership dues, initiation fees and assessments charged by the Association to its own members, and the representation fee has been set at 85% of that amount solely because that is the maximum presently allowed by law. If the law is changed in this regard, the amount of the representation fee automatically will be increased to the maximum, said increase to become effective as of the beginning of the Association membership year immediately following the effective date of the change.

This clause contains a contingency provision, which would change the maximum amount of representation fee payment from 85% to some higher figure. It is recommended that school boards **not** agree to this language because it is based upon an anticipated change in the law. Such "if/then" clauses have been found to be illegal by PERC. **Hoboken**, PERC No. 82-7.

C. Deduction and Transmission of Fee

1. Notification

Once during each membership year covered in whole or in part by this agreement, the Association will submit to the Board a list of those employees who have not become members of the Association for the then current membership year. The Board will deduct from the salaries of such employees, (in accordance with paragraph 2 below), the full amount of the representation fee and promptly will transmit the amount so deducted to the Association.

C. 447, P.L. 1979, requires that no representation fee deduction can be made unless the majority representative first establishes a demand and return system. This system provides that a non-union member may appeal the amount of the representation fee assessed against him/her. The union must provide the non-member with a full and fair hearing, and has the

burden of proof in justifying the amount of the fee. Non-members who are dissatisfied with the outcome of their appeal at the local level may appeal further to a three-member Tripartite State Board. Language should be negotiated requiring the majority representative to provide evidence of the existence of this system to the public employer and to all non-union members, before any deductions are made.

2. Payroll Deduction Schedule

The Board will deduct the representation fee in equal installments, as nearly as possible, from the paychecks paid to each employee on the aforesaid list during the remainder of the membership year in question. The deductions will begin with the first paycheck paid;

(a) 10 days after receipt of the aforesaid list by the Board; or

(b) 30 days after the employee begins his or her employment in a bargaining unit position, unless the employee previously served in a bargaining unit position and continued in the employ of the Board in a non-bargaining unit position or was on layoff, in which event the deductions will begin with the first paycheck paid 10 days after the resumption of the employee's employment in a bargaining unit position, whichever is later.

The law establishes a minimum period that must elapse before non-union employees who enter the bargaining unit for the first time or who re-enter the bargaining unit must pay a representation fee. School boards could seek to negotiate periods longer than the thirty and ten day minimum periods stated in this section.

3. Termination of Employment

If an employee who is required to pay a representation fee terminates his or her employment with the Board before the Association has received the full amount of the representation fee to which it is entitled under this Article, the Board will deduct the unpaid portion of the fee from the last paycheck paid to said employee during the membership year in question.

This should be agreed to only if the Board must deduct the unpaid portion of the union dues from the last paycheck paid to union members during the membership year in question. The absence of equitable treatment for non-union and union members could raise some legal questions.

4. Mechanics

Except as otherwise provided in this Article, the mechanics for the deduction of representation fees and the transmission of such fees to the Association will, as nearly as possible, be the same as those used for the deduction and transmission of regular membership dues to the Association.

5. Changes

The Association will notify the Board in writing, of any changes in the list provided for in paragraph 1 above and/or the amount of the representation fee, and such changes will be reflected in any deductions made more than 10 days after the Board received said notice.

6. New Employees

On or about the last day of each month, beginning with the month this agreement becomes effective, the Board will submit to the Association, a list of all employees who began their employment in a bargaining unit position during the preceding 30 day period. The list will include names, job titles and dates of employment for all such employees.

The date of employment should coincide with the effective date that the individual is placed on the payroll and not on the date that the school board approved his/her employment.

D. Indemnification and Save Harmless Provision

1. Liability

The Association agrees to indemnify and hold the Board harmless against any liability which may arise by reason of any action taken by the Board in complying with the provisions of this Article, provided that:

(a) the Board gives the Association timely notice in writing of any claim, demand, suit or other form of liability in regard to which it will seek to implement this paragraph; and

(b) if the Association so requests in writing, the Board will surrender to it full responsibility for the defense of such claim, demand, suit or other form of liability and will cooperate fully with the Association in gathering evidence, securing witnesses, and in all other aspects of said defense.

2. Exception

It is expressly understood that paragraph 1 above will not apply to any claim, demand, suit or other form of liability which may arise as a result of any type of willful misconduct by the Board or the Board's imperfect execution of the obligations imposed upon it by this Article.

This "Indemnification" language has been offered by teacher unions in some districts as an assurance that the board will not incur any cost if sued by an irate employee forced to pay a representation fee. The language, however, seems to lack the clarity the board should demand; e.g., the meaning of paragraph 2 is ambiguous enough to make the entire provision meaningless. Additionally, the clause asks the board to surrender all responsibility for its own defense to the Association, a delegation that most boards would find unacceptable.

The board should insist that it be fully indemnified against financial liability arising out of, or by reason of, any action taken or not taken in conformance with an agency shop clause. Such a clause might read as follows:

The union shall indemnify and hold the employer harmless against any and all claims, demands, suits and other forms of liability, including liability for reasonable counsel fees and other legal costs and expenses, that may arise out of, or by reason of any action taken or not taken by the employer in conformance with this provision.